

Fakulta Sociálních Věd

**The ‘External Dimension’ of European Union Policy on
Immigration and Asylum: Readmission, Return, and
Protection in the Region of Origin**

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Declaration

"I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains nothing which is the outcome of work done in collaboration with others, except as specified in the text and where due acknowledgement has been made".

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Abstract

Whilst there is a recognised need for 'legal' migration into the EU, 'irregular' immigration and flows of asylum seekers remain unwelcome. EU member states, finding that domestic-based controls have not alone been effective, realised the importance of the 'external dimension' of policy on immigration and asylum: that of involving the issue of migration in the EU's external relations with other states.

Two approaches may be discerned within this 'external dimension' of policy – a control-oriented approach, focusing on preventing migrants from reaching the territory of the EU through exporting stricter border controls or on facilitating their swift removal via readmission agreements; and a preventive or 'root causes' approach, whereby policies seek to reduce 'push factors' which induce migrants to leave their country of origin.

EU policy within the 'external dimension' needs to be coherently realised alongside developmental, trade and foreign policy - but it will be shown that the control-oriented goals of Justice and Home Affairs have tended to predominate policy and actions taken; 'root causes' have more or less dropped off the agenda, and there is a growing tendency to focus on transit countries rather than countries of origin. However the European Commission has recently showed an intention of promoting more 'codevelopment' style policies.

This paper outlines the emergence and development of the 'external dimension' of EU policy on immigration and asylum. The external dimension is expected to become of more importance in future years and was recently given a new impetus within the 2004 Hague Programme. Three areas of policy are focused upon in this paper: exporting border controls and readmission agreements, return (and circular) migration and repatriation, and 'protection in the region' (Regional Protection Programmes). The ultimate aim is to ask how policies to reduce unwanted migration into the EU are changing, and whether they can, and are likely, to be reconciled with policies that will benefit developing countries and migrants themselves.

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Chapter 1: Introduction and Background

1.1 Introduction

Migration falls into the domestic and the foreign policy agendas of the European Union, but due to domestic pressures it has been pushed onto the latter. Since the 1990s, the EU has sought to develop an 'external dimension' of cooperation on immigration and asylum in an attempt to manage migration, through cooperation with both migration 'sending' and 'transit' countries.

In the past few years, there has been an increased emphasis on the 'international' or 'external' policy dimension. It is thought that during the next five years, European action in the area of migration and asylum shall take on a distinct *ad extra* nature. The former EU Commissioner for Justice and Home Affairs (JHA) stated that 'the external dimension of asylum will grow in importance'¹, and the European Commission announced, in its June 2004 Communication, that new possible approaches to asylum and immigration should focus 'more sharply' on action that could be taken outside the EU². Externalisation of the burden of territorial admission may become the core aspect of EU action in this field under the Hague Programme – also referred to as 'Tampere II'. This programme was endorsed by the European Council in November 2004 and will be the reference for completing the Area of Freedom, Security and Justice before 2010³. The internationalised agenda represents a movement of policy from the Directorate General of Justice and Home Affairs (concerned with questions of how to operate an asylum system on home territory) into the realm of foreign or 'external' relations, humanitarian assistance, and development. Current efforts are being directed at making third states capable of single-handedly controlling the flows of refugees and irregular migration, whose potential destination is the EU.

¹ Antonio Vitorino at the Conference of the European Policy Center and King Baudouin Foundation, Brussels, October 4, 2004.

² European Commission (2004, June)

³ Council of the European Union (2004, December)

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There are two different concepts of the 'external dimension'. The first concept encompasses externalising the traditional tools of domestic or EU migration control and may be termed a 'restrictive' approach, and the second concept encompasses tackling the 'root causes' of migration and refugee flows, through both development assistance and foreign policy tools – a 'comprehensive' or 'preventive' approach. Both these concepts are based on different assumptions regarding the best way to influence migration flows, and have the potential for different impacts on migration flows, as well as refugee protection, relations with third countries, and consequences for those countries of origin and transit. Actions within the 'external dimension' include, for example, readmission agreements, stricter border controls, capacity building, protected entry procedures, targeted development assistance, repatriation programmes combined with development assistance, and protection in the region of origin, among others.

Migration is a sensitive and politicised issue in EU domestic affairs, which has led to criticism that the wider causes, effects and dynamics of migration in the main 'sending' regions have not been adequately addressed in policy, which has instead kept a narrower focus on migration restriction; there has been a certain emphasis on return and readmission, which could be seen as positive for EU states, at least in the short-term, but the benefits for sending countries are more open to question. Nonetheless, the EU realises that migration cannot be managed only through restrictive measures, and attempts have been made to incorporate development issues in its migration management, addressing the long-term 'root causes' of migration, such as poverty, human rights abuse and conflict. This paper shall attempt to show how each approach has manifested itself within EU policy, and whether, and why, the more control-oriented approach has predominated.

Not all proposals are defined precisely, and the debate is quickly developing at present, influenced by shifting political agendas, unilateral member-state initiatives, and reaction to incidents such as that involving African asylum seekers on the Cap Anamur ship in the Mediterranean, and at the border between Morocco and Spain in Ceuta and Melilla. Each of the range of actions and proposals is at a different stage of development and co-operation. For example, interception and readmission measures are in motion at EU, multilateral, and

bilateral levels; migration-management clauses are being integrated into EU external agreements with other countries; and European Regional Protection Programmes (RPPs), including humanitarian assistance and development elements, have been proposed and are in the early stages of implementation.

In terms of refugee protection, some of the proposals tabled, such as resettlement, are potentially positive in their effects; some, such as transit processing centres, threaten fundamental principles and have been subject to vocal criticism. Others, such as the above-mentioned Regional Protection Programmes, remain unspecific and raise many basic questions for their implications for protection to be quite clear at present. Although the evaluation of new proposals and projects is incomplete at this stage, ultimately the potential for negative and positive impacts must be measured both against international principles and against the protection of human rights of migrants and individual refugees in specific situations. Consultation with stakeholders in the countries and regions in question is essential. Dialogue, partnership, and co-operation are familiar terms in the new proposals, and NGOs stress that every effort must be made to ensure that dialogue and co-operation are comprehensive, genuine, and meaningful.

There is further a debate taking place on the positive impact which migration can have on development. This topic shall be also touched upon in this paper as it is impossible to distinctly separate the two issues and, further, policy on the 'external dimension' has recently embraced such debate; however it is not the scope of this paper to evaluate all the ways in which migration policy and development policy may be used and developed to complement each other, but rather to concentrate on the development of the 'external dimension' of EU policy on asylum and immigration, and assess the impact, benefits and drawbacks which this may have for EU countries, third countries and migrants involved.

Therefore this paper aims to focus on three specific areas within the 'external dimension' policy: readmission and the exportation of border controls (Chapter 3); return (and circular) migration (Chapter 4); and Regional Protection Programmes (including resettlement and protected entry procedures) (Chapter 5). It begins by providing a broad outline of the

emergence, scope and dynamics of the 'external dimension' of EU policy on immigration and asylum (Chapter 2). Each of the three areas in Chapters 3-5 are followed by positive policy recommendations. The paper is based on recent and current literature giving an overview of the 'external dimension', various reports of and concerns voiced by NGOs and research institutes on the 'external dimension' generally and on each of the three specific areas mentioned above, and also a critical consideration of past and present policy statements and acts of bodies of and persons representing the EU in order to determine those priorities presently being ascribed within policy and the implications thereof. The ultimate question which this paper aims to address with respect to the 'external dimension' in general and each of the three areas in particular, is how policies to reduce unwanted migration into the EU are changing, and whether they can, and are likely, to be reconciled with policies that will benefit developing countries and migrants themselves.

2.3 Overview of Migration

International migration is a dominant characteristic of political and social relations in today's world. It is estimated that there are 175 million international migrants (defined as people living outside of their country of usual residence for a period of at least a year), which amounts to 3 % of the world's population⁴. In the context of this paper both voluntary and forced migrants shall be considered together, and distinctions made where appropriate – as although the literature on the causes of migration usually distinguishes between refugee flows and voluntary economic migration, in practice such a distinction is often difficult to sustain⁵. Although migration has increased steadily in absolute terms over the past 40 years, as a proportion of the global population the total of international migrants has remained roughly the same. However, in most data the scale of international migration

⁴ UNHCR (2002, October). Although the definition of 'international migrant' varies among different countries, UNHCR recommended that a long-term migrant be defined as a person who moves to a country other than his or her usual residence for a period of at least a year (and the 175 million reference is made with respect to this category is made the 175 million reference), and a short-term migrant as a person who moves for at least three months but less than a year.

⁵ Martin, S. (2000). The factors which trigger migration usually are a complex mix of political, social and economic conditions, as well as individual psychological factors. Moreover, some of those who leave for mainly economic reasons may attempt to reside in destination countries by applying for asylum, thus confusing the issue (Boswell & Crisp, 2003)

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is likely to be underestimated as it does not account for 'irregular' migrants (ie undocumented migrants), the numbers of which it is thought have increased rapidly over the past decade⁶. The numbers of migrants who stay in their own country far exceed those of international migrants. Approximately 60 % of migration is between developing countries, whilst the developed countries receive the remaining 40 % of international migrants from both developing and developed countries⁷. Around 9 % of international migrants – 16 million people – are refugees, who are overwhelmingly to be found in developing countries. Developing countries are also home to most of the 25 million Internally Displaced Persons⁸.

It should be emphasised that migration has always been a part of human existence. Mobility, ie migration, is a natural and human phenomenon and is acknowledged by the Universal Declaration of Human Rights (1948)⁹. A recent increase in international migration has occurred in conjunction with general increases in flows of trade, investment, finance and cultural products¹⁰. It is also part of a growing *transnationalism* – “behaviour or institutions which simultaneously affect more than one state”¹¹. International migration has transnational implications when migrants make their livelihoods in one ‘receiving’ state and at the same time maintain links and activities in their country of origin. This transnational dimension of migration links ‘sending’, ‘transit’ and ‘receiving’ (or ‘host’) countries, and underlies the relevance of migration in current international politics. Policy which focuses on the ‘sedentarism’ of migration, and which ignores this transnational dimension, to an extent ‘roots causes’ policy, may not be as effective in realising its aims due to such a lack of recognition¹².

⁶ UNHCR (2002, October)

⁷ UNHCR (2002, October)

⁸ House of Commons International Development Committee (2004): p 16

⁹ In its article 13, it recognises that “(1) Everyone has the right to freedom of movement and residence within the borders of each state”, and “(2) Everyone has the right to leave any country, including his own, and to return to his country”; further more it grants in its Article 14 that “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. Universal Declaration of Human Rights (1948). G.A. res. 217A (III), U.N. Doc A/810 at 71.

¹⁰ Held et al. (1999)

¹¹ Castles & Miller (2003): p 1

¹² Gent, S. (2002, September)

There have been growing efforts to strengthen international cooperation on migration issues - for example the establishment of the UN Global Commission on International Migration, which met for the first time in February 2004, and called for the setting up of a World Migration organisation, bringing together the migration related functions of UN and other multilateral agencies into a single body - although it acknowledged that no international consensus to create new institutions currently exists¹³.

1.3 Immigration into the EU

In the current age of globalisation and of fears about common security, immigration reaches to the very heart of state sovereignty, creating a tension. On one hand, EU member states acknowledge that they need to co-ordinate control of their borders, and co-ordination requires states to make compromises if their national laws are different. However, the political reality is that states desire to keep as much control of these policies as possible: to decide who may and may not enter, and who may remain in, their territory, and under what conditions. Further, despite the supranational nature of the European Union and the fact that now decision-making on most areas of immigration and asylum policy (except legal migration) is subject to qualified majority voting, individual member states' interests have tended to dominate and determine the agenda on migration and asylum.

The scale of immigration and the origin and background of individual immigrants varies across the EU. It has however overall increased and become more differentiated; most member states have several types of immigration – highly skilled, low skilled, refugees, permanent and temporary migrants, and family reunification. Women account for almost half of all immigrants. An examination of migration flows into the European Union over the last 15 years clearly shows that the total number of immigrants (both 'legal' and 'illegal') is far from having fallen¹⁴. The number of 'illegal' immigrants shot up, whilst the number of regular migrants has dropped – largely because many of them have been made 'illegal' by restrictive laws¹⁵.

¹³ Global Commission on International Migration (2005, October)

¹⁴ The Greens/European Free Alliance (2001, July 4)

¹⁵ The Greens/European Free Alliance (2001, July 4)

In its Communication on A Community Immigration Policy (2000), the European Commission proclaimed the end of zero immigration policies and affirmed that Europe is an immigration area¹⁶. There is legal immigration into the EU that member states both regulate and acknowledge as being beneficial economically – despite restrictions on illegal immigration, migrants are needed to fill skills gaps in the European labour market (for example in the health sector, information technology and construction, but also non-skilled labour), and can be potentially utilised to offset the negative effects of the ageing of the European population¹⁷. There is thus likely to be continued reliance by EU member states on migrant labour; continued migration to EU member states and efforts to promote more flexible European labour markets make up part of EU efforts to ensure the ambitious economic reform objectives agreed at the Lisbon European Council in 1999¹⁸.

However, whilst this type of migration is generally welcomed, asylum seeking and irregular migration are generally not welcomed. In the context of migration to high income countries, irregular migration is prevalent. Lucas (2005) observes that the focus on temporary admission, even for recent programmes intended to attract the highly skilled, combined with low recognition rates among asylum seekers, encourages irregular migration. A more pessimistic view is that controls do not prevent significant irregular migration anywhere.

1.4 Policies to 'manage' migration

Thus, from the late 1990s, as European governments recognised that a complete end to immigration was neither desirable nor feasible, they began to speak of 'migration management'. 'Migration management' entails a two-pronged approach, that of preventing illegal immigration and restricting the number of asylum seekers entering Europe; and that

¹⁶ European Commission (2002, November)

¹⁷ Statewatch (2003, June). At a Greek EU Presidency Conference in Athens in May 2003 the Foreign Minister, George A Papandreou, suggested that the EU needed 30 million immigrants by 2020. This is because of a predicted 30% fall in the working population (and a drop from 22% to 12% of the EU's share of world trade)

¹⁸ Geddes, A. (2004, October)

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of encouraging some immigration to meet demands for labour in certain economic sectors. Member states at present each individually work out the precise policies – each member state has its own individual visa requirements for non-EU nationals, as well as different asylum procedures in place, although recently more harmonisation of legislation has taken place with respect to asylum procedure and will be taken forward under the Hague Programme.

It is now being recognised that migration cannot be managed only at the EU's borders, and in an attempt to find alternatives, the issue of migration is becoming more relevant in both EU foreign and development policy. The EU has begun to attempt to address the 'root causes' of migration in both sending and transit countries, but ultimately its aim is to restrict the number of migrants entering the EU, in particular 'irregular' or undocumented migrants, and asylum seekers.

What has emerged over the last decade could be described as rather a 'stick and carrot' approach to migration and asylum, promising aid or visa quotas in return for readmission agreements (agreements whereby each party state agrees to reaccept back into their state from the other state irregular immigrants and failed asylum seekers, in some case this includes third state nationals)¹⁹; 'roots causes' have been subverted to control imperatives; nonetheless it is conceivable a new migration for development (M&D) policy, and 'co-development' policy, propelled forwards by the European Commission, are about to flourish.

At times the relationship between rhetoric and reality presents problems in terms of interpreting the practical impact of policy: rhetoric varies enormously, from that which speaks to national electorates of the need to reduce the number of asylum by preventing them from landing in EU states, to that which seeks to improve the asylum infrastructure in countries in regions of origin, so that those who arrive in neighbouring countries can quickly seek and find protection without having to undertake long and dangerous journeys.

¹⁹ 'Sticks' symbolising punitive measures, 'carrots' symbolising more positive incentives or rewards. See Pastore, F. (2004, September)

Talk of control appeals to national electorates in receiving countries, while those involved in refugee protection are hostile, who see protection losing out to the drive for control (which seeks short term fixes and new technology and is less concerned with development and human rights). Another discourse, of capacity building, of universalising the 1951 Geneva Convention on the status of refugees²⁰, of creating infrastructures in those countries that receive most refugees and creating durable solutions should appeal to both sides - refugee advocates and the advocates of control – who do in fact both desire, but from different perspectives, to reduce migratory pressures.

While there continue to be those who argue that governments must address root causes such as poverty, conflict and human rights abuses, others argue that one must understand the perspective of states and develop solutions that states will find acceptable and that stand a chance of being implemented, but within that lies an inherent danger, that the selfish desires of states are not to be trusted.

1.5 The migration-development debate/'nexus': More development for less migration – or better migration for more development?

The idea that development should be fostered in order to reduce migration, or rather, to reduce migration pressure, is not new (although indeed, the assumption itself that migration should somehow be altogether halted provokes argument, and yet such an idea may be found in 'anti-immigration' rhetoric). However, poverty reduction is not in itself an international migration reducing strategy. It had long been assumed that development and democratisation lead to a decline in out-migration, but during the last decade demographers, economists and sociologists have increasingly pointed out that, since the industrial revolution in Western Europe, development *increases mobility*, both social and geographical, and that the simultaneous increase in economic productivity, social complexity and mobility (both internal and international) can last for very long²¹ – in other

²⁰ 1951 Convention Relating to the Status of Refugees, 189 UNHCR 2545, entered into force on April 22, 1954 and the 1967 Protocol Relating to the Status of Refugees, 606 UNHCR 8791, entered into force on October 4, 1967.

²¹ Pastore, F. (2003, December)

words that, rather than diminishing migration pressure, development and democratisation can stimulate migration in the short term by raising people's expectations and by enhancing those resources that are needed to move. A curve which shows the increase first and then the decrease of outwards mobility at the growth of national economic productivity is often termed the '*migration hump*'²². Moreover, conflict is very often a far more important 'push' factor than underdevelopment²³. In recent years policy awareness of this has been increasing and as a result the basic 'root causes' approach, or 'more development for less migration' ('aid in place of migration') has been gradually abandoned, in favour of a more sophisticated, 'migration hump' approach²⁴; and 'migration for development' is beginning to be incorporated within policy. There are therefore two questions which may be dealt with in policy in this area: the first, and most relevant to policy considered within this paper on the 'external dimension', is what effects do development and poverty reduction strategies have on international migration? The second is what impact does international migration have on development and poverty reduction?

As regards the second question, it should be mentioned that migration is not a panacea for development problems, but properly managed it can deliver major benefits in terms of development and poverty reduction. Migration can have both positive and negative effects on countries of origin and destination. The relationship between migration and political and social-economic development is complicated, and varies depending on the country and region – necessitating the shaping of policy according to the needs of particular countries. International migration can contribute to poverty reduction, with successful deployment of the '*three Rs*': of recruitment, remittance and return²⁵, and understanding the migrant

²² However Lucas (2005) notes that such a hump seems to arise at very low incomes, and where a migration regime allows the movement of relatively unskilled workers, economic development in the country of origin apparently is able to reduce migration pressures. This may be true when the development strategy chosen in the sending nations results in tightening labour markets at home. Thus, evidence shows us that a lack of economic development in the sending countries does contribute to migration pressures, but does not at all deny a role for other major explanatory factors. For example, proximity to a high income country is important, and migration flows already established can be strengthened by social networks. Further, evidence does indicate that asylum seekers are fleeing situations of real conflict; such violence may be both influenced by economic development and also prejudice development prospects.

²³ Usher, E. (2005, April)

²⁴ Pastore, F. (2003, December)

²⁵ These are three aspects of the migration-development nexus, whereby migration and development may complement each other.

networks that operate from and across and link states with migrants in the receiving countries. Higazi (2005) outlines in detail examples of how such approaches are able to work in practice. Migration policies can be adapted to facilitate and promote development, and development policies can be used to offset some of the negative aspects of migration. Thus migration maintains relevance to development policy of the EU, relating to the accomplishment of the Millennium Development Goals, which aim to halve poverty and provide a sustainable environment. The achievement of the MDGs both impacts and is impacted upon by the effective management of migration²⁶. While acknowledging the contribution of migrants in host countries, it is important to note that the flows of financial, technological, social and human capital back to countries of origin contribute to the development of migrants' home countries, and key policy in this area concerns remittances, the role of the diaspora, and reduction of the 'brain drain' (for example, promotion of circular migration).

However, all too often in policy where development and migration are linked, the impetus comes from within Europe, rather from the migrant-sending countries, and is generally clearly intended to serve domestic EU political interests; in this context this paper will also take into account such linking, and the overriding necessity for coherence and 'joined-up' policies between Justice and Home Affairs and development and external relations.

1.6 Overview

We have seen so far that immigration into the EU poses a problem for EU member states, and although there is a need and desire for migrant labour, 'irregular' immigration and asylum seekers are perceived negatively, and thus EU member states have attempted to impose restrictions on such migration; and yet, finding that domestic measures have not been effective, they have looked to cooperation with other member states, with sending and transit countries, and to the 'root causes' of migration, in order to fight undesired immigration into the EU. Development may play a part in reducing migration pressures,

²⁶ UN Population Fund (2004). International migration and development: Key issues for the High-Level Dialogue in 2006.

but the relationship between migration and development is complex. However there is a growing awareness of the potential for migration to be used as a force for promoting development within poorer countries.

Chapter 2: Development of EU Policy on the 'External Dimension'

This chapter aims to explain the external element of the EU's policy on immigration and asylum, demonstrating that it is comprised of two different approaches – a 'control-oriented' approach, focused on restricting access to the EU, and a 'preventive approach', focused on tackling migration pressures and 'root causes'. The chapter will outline how the former has tended to prevail, for institutional reasons, because of a dominance of Justice and Home Affairs and lack of coherence with development policy-making, and because of the above-all great investment and difficulties involved in addressing 'root causes'. However, whilst within newer initiatives such as the Hague Programme control-oriented approaches are highly visible, whilst 'roots causes' appear to have more or less dropped of the agenda, and whilst calls for dialogue are openly limited to issues in the interest of the EU, a new impetus from the Commission demonstrates a growing awareness of the potential of migration for development, and the possibilities of codevelopment.

2.1 Internal versus external immigration control

The EU approach to migration and asylum has developed around two main elements, the first being an internal element which focuses on conditions for the entry, residence and status of third country nationals, measures to tackle irregular migration, and conditions for the reception and processing asylum claims; and the second is an external element (or 'external dimension' of cooperation in JHA) which focuses on relations with third countries and measures to tackle the root causes of migration.

Since the early 1970s, west European governments introduced a range of measures to try to limit or manage immigration and refugee flows into their territory (for example, imposing strict visa requirements, carrier sanctions and general tightening of borders). Most commentators now agree that these policies have had only qualified success. Attempts to restrict access to asylum systems, or curtail the rights of asylum seekers, have generated an increase in levels of illegal migration. They have also undermined states' commitment to protect genuine refugees. Measures to restrict illegal entry and stay have driven migrants

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and refugees to use more dangerous routes to enter Europe, forcing many to employ the services of smuggling or trafficking networks. Restrictive migration policies have also created a number of unwelcome effects in other policy areas. They have reduced the supply of workers to many sectors in need of labour; have placed a strain on race relations; and have in some cases created tensions with migrant-sending countries²⁷.

Because of the limitations of the former, domestic control-based approaches, the EU began to look for alternatives, seeking to address migration management problematics through cooperation with migrant-sending countries and the transit countries through which migrants and refugees travel²⁸. At EU level, this goal has been most clearly stated in a series of European Council Conclusions, calling for the integration of migration and asylum goals into the EU's external policy²⁹. This area of cooperation with third countries has become known as the 'external dimension' of EU cooperation in Justice and Home Affairs. It has been argued that the integration of migration issues into external relations is probably the single best means of addressing migration control problems³⁰. Further, the external dimension remains important because of its link to security. For example, the EU's 'European Neighbourhood Policy' (ENP)³¹ has been mainly about security, and there has been a shift towards linking migration and foreign policy issues because of the recognition that Europe can 'either export security or import instability'³².

New concepts which have flowed from policy emerging at the interface between foreign affairs and home affairs, around the external dimension of Justice and Home Affairs, have been: the development-migration nexus (referred to in the previous chapter in respect to the migration-development debate), codevelopment, readmission agreements, repatriation,

²⁷ Boswell, C. (2003)

²⁸ Geddes, A. (2004)

²⁹ Boswell, C. (2003)

³⁰ Boswell, C. (2005,)

³¹ The aim of the European Neighbourhood Policy (ENP) is to prevent the emergence of new dividing lines on the European continent after the EU enlargement on 1 May 2004 by establishing privileged relationships with old and new neighbours of the EU which are however distinct from EU membership.

³² Schuster, L. (2005, October)

protected entry procedures, regional protection areas, transit-processing centres, resettlement, and the protection of refugees in regions of origin³³.

The 'external dimension' of EU immigration and asylum policy was not formally embraced by the European council until October 1999, in the Conclusions of the Special European Council on Justice and Home Affairs at Tampere, which stated that justice and home affairs concerns (which include immigration and asylum issues) should be "integrated in the definition and implementation of other Union policies and activities". Still, components of such a strategy in EU immigration and asylum policy had been emerging since the 1990s³⁴.

2.2 The early development of the 'external dimension'

The notion that migration policies should not operate only downstream, but should instead incorporate a close consideration of 'push factors' and try to influence them, can be found in documents of the Commission since the late 1980s; as early as 1991 the European commission was calling for the integration of migration issues into the EU's external policy³⁵. At a general level, addressing the 'root causes' of migration became a policy objective immediately after the signing of the Maastricht Treaty in 1992. One reason for this was the rise in levels of migration and refugee flows of this period. The lifting of restrictions on movement from the former communist bloc generated fears about a mass influx of immigrants from central and Eastern Europe. The early to mid-1990s also saw a sharp rise in the numbers of refugees displaced by civil conflict, especially from the former Yugoslavia. The increase in levels of migration and refugee flows generated a sense in many countries that traditional domestic control instruments were insufficient to manage unwanted migration. Migration issues had become highly politicised in most west-European states from the 1980s onwards, and political parties were competing for electoral support with promises to restrict unwanted migration. Yet these expectations were difficult to fulfil. Liberal democratic states found themselves constrained by a range of domestic

³³ ECRE (2005, April)

³⁴ See for example European Council (1999)

³⁵ European Commission (1991)

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constitutional and international legal norms³⁶. With the Single European Act of 1988 abolishing restrictions on free movement of EC workers within the single market, and the Schengen Agreement, coming into force in 1995, which abolished border controls between its signatory countries, a resulting loss of national control over borders created the perception of a need for 'flanking' measures between EU countries to compensate for a heightened vulnerability to irregular entry. It was quickly recognised that EU (and especially Schengen) countries would have to coordinate efforts to limit or prevent movement into the EU as a whole. This would require more intensive cooperation with countries of origin and transit countries.

In Edinburgh 1992, the 'Declaration on Principles Governing External Aspects of Migration Policy' stated that the Council was "conscious of the role which effective use of aid can have in reducing longer term migratory pressures through the encouragement of sustainable social and economic development"³⁷. This approach gave rise to the 'aid in place of migration policy'³⁸.

However, the structure of the Union represented a problem for the development of the external aspects of migration policies. In the Maastricht Treaty, asylum and immigration issues were located in the third pillar of intergovernmental 'Police and Judicial Cooperation', while the decisive instruments for policies regarding external relations were located in the first and second. The Treaty of Amsterdam of 1997 gave a new impetus to the process in which ministries of justice, home affairs and integration put specific issues onto the foreign policy agenda. It communitised large parts of the former third pillar, locating asylum and immigration policies within the first pillar, under the Directorate General (DG) JHA. This resulted in a slow but progressive institutionalisation in working groups, budget-lines, conventions and agreements with third countries, and was a change from former *ad hoc* initiatives.

³⁶ Boswell provides examples: Boswell, C. (2003): p 622

³⁷ See Declaration on principles governing external aspects of migration policy, Annex 5 to Part A of the Conclusions of the Edinburgh European Council, 11-12 December 1992, Bull EC 12-1992, 23.

³⁸ Boswell, C. (2003)

2.3 Two schools of thought

There are two schools of thought on approaches within the 'external dimension': the 'control-oriented' approach, and the 'roots causes', or 'preventive' approach. Both schools shall be considered in the following section in more detail, after a short introduction here. It is necessary to consider these two schools of thought, as defined by Boswell (2003), because, she predicts, whichever approach predominates will have different impacts not just on questions of migration management, but also on refugee protection, development and stability in sending and transit countries, and on EU relations with third countries.

EU policies on the 'external dimension' of JHA are still at an early stage, and no settled pattern of cooperation has yet emerged³⁹. The EU is still struggling to define which forms of cooperation and which policy instruments can best realise the many goals of migration policy. To date, cooperation has comprised a combination of both types of approach: the externalisation of control tools, and a more comprehensive approach.

The first school of thought and practices on the external dimension involves repressive or restrictive measures ('control-oriented'): these typically involve the exportation of domestic or EU level control measures to third countries: essentially involving cooperation to combat illegal entry, trafficking and smuggling, 'pre-frontier' control - strengthening/ better border controls in third transit countries, where EU police and border officials assist with border control in third countries, and readmission agreements (to allow the return of irregular migrants and asylum seekers to countries of transit or origin of irregular migrants).

The second school, that of migration prevention, can be loosely termed as 'preventive measures' which deter people from moving, or influence their chosen destinations, attempting to address the causes of migration and refugee flows, and to provide refugees with access to protection nearer their countries of origin through improving conditions in countries of origin. Preventive approaches involve a different range of tools to increase the choices of potential refugees or migrants: more targeted use of development assistance,

³⁹ Boswell, C. (2003)

trade and foreign direct investment, or foreign policy goals. These notions of prevention – and especially the ‘root causes’ approach – had been debated sporadically since the early 1980s⁴⁰. Many experts, officials and lobbyists with a liberal or human rights perspective saw preventive approaches as a more benign alternative to migration control measures. They aimed to address the problem of migration control in a way that would not compromise the rights or freedoms of immigrants and refugees. Instead, the idea was to offer potential migrants or refugees a real possibility of staying in their place of origin. In this connection development policies become blurred with migration policies.

Boswell (2003) provides an analysis of how and why externalisation and preventive approaches emerged, focusing on three central determinants: the potential of such approaches to meet migration policy goals; the institutional context of decision-making; and domestic political and electoral processes. She, along with other commentators, argues that the second and third factors – institutional structures and electoral pressures – have overall dominated in favour of the prevalence of ‘externalisation’ approaches over preventive ones. Now both schools and their influence on policy shall be considered in more detail.

2.4 The control-oriented approach

Within this latter, more restrictive or ‘control-oriented’ approach, two strategies may be distinguished – first, the wholesale ‘externalisation’ of migration control – the exportation of classical migration control instruments to sending or transit countries outside the EU; the main instruments here are border control, measures to combat illegal migration, smuggling and trafficking, and capacity-building of asylum systems and migration management in transit countries. The exportation of migration control was especially pronounced in the

⁴⁰ Boswell (2003) argues that the preventive approach has many advantages over a control-based approach. It takes a longer-term perspective which attempts to tackle underlying causes; and it avoids the damaging effects of control-based approaches. Importantly, it offers a more constructive basis for relations with third countries, building on mutually beneficial forms of cooperation. This contrasts with externalisation approaches, which imply an attempt to shift the burden of control onto sending or transit countries who are likely to be badly equipped to deal with such problems.

EU accession process⁴¹. The second element comprises a series of provisions for facilitating the return of asylum seekers and 'illegal' migrants to third countries. The main instrument here is readmission agreements with third. Other provisions on safe third countries allowed EU states to return asylum seekers to countries from which they came or through which they had passed which were considered 'safe'. Boswell (2003) accounts for the emergence of this form of restrictive, control-oriented approach as the result of institutional dynamics, plus an important populist element⁴². The protagonists in the externalisation of migration management were justice and home affairs officials, who desired to transfer national control mechanisms not just to the EU level, but further abroad. These approaches had potential popular appeal with electorates – they could easily be portrayed by politicians as having an immediate and tangible impact on migration management.

2.5 The preventive approach

It was not until the 1990s that 'preventive' proposals on migration began to take on concrete form. A number of officials in both foreign and interior ministries started to view prevention as a serious alternative to existing control-based approaches. The Scandinavian countries and the Netherlands expressed vocally their advocacy of preventive strategies. But the feasibility of such approaches was influenced more by the changing international context after 1989. Since the early 1990s there had been a huge expansion of multilateral activities in the areas of prevention and peace building, for example early warning, human rights monitoring, institutional capacity-building and post-conflict reconstruction, various forms of political mediation, to more robust peacekeeping and military interventions⁴³. Such a change in perception regarding multilateral involvement in conflict prevention and

⁴¹ Future member states were obliged to incorporate the Schengen *acquis* into their national legislation, implying the introduction of stricter border controls, immigration and asylum policies.

⁴² Since the early 1990s migration had been progressively reconceptualised as a security threat to receiving countries – links to organised crime, terrorism or Islamic fundamentalism were stressed. This redefinition of migration as a threat was not simply a product of real changes in the scale or costs of migration, but rather, migration issues were an easy target for focusing various concerns about crime and internal security, welfare state reform and job security, as well as less and less relevant traditional collective identities in post-industrial societies. From this tendency a more and more virulent anti-immigrant discourse arose in most west European states.

⁴³ Boswell, C. (2003): p 625

peacekeeping had an influence on international responses to refugee problems; attempts to address the causes of flight or promote had been mostly precluded by the political risk of intervention during the era of the Cold War era, but from the early 1990s international humanitarian and refugee organisations became more active in countries of origin.

However, the control-oriented Council of Ministers, institutionally weak commission JHA Task Force and lack of political will on the side of the European Council meant that preventive approaches were until the 1990s marginalised – JHA cooperation with third countries took the form of providing support to future EU members to reinforce border control, develop asylum systems and tackle illegal migration. After Maastricht, no specific objectives or deadlines were set for developing preventive policies; the theme was not taken up by subsequent European Councils until Tampere. The Commission had argued that a root cause approach should be integrated into all external policies of the EU, including the areas of human rights policies, humanitarian assistance, security policy, demographic policies, and trade, development and cooperation⁴⁴. There was thus a readiness at Council and Commission level to recognise the necessity of preventive approaches, but the institutional context of policy-making did not provide a favourable environment. First of all, JHA officials meeting in the Council of Ministers were still concentrating on the 'externalisation of control' agenda outlined above, and had little motivation to hand over migration management tasks to development and foreign affairs officials. The latter at the same time wished to avoid what was seen by many as an attempt to compromise development goals through targeting development to prevent migration flows. Development and external relations officials in the Commission therefore resisted attempts to integrate migration prevention goals into EU external policy.

However, the predominance of the 'externalisation of control' approach was challenged in the late 1990s, when a revived interest in preventive approaches was suggested by a number of developments⁴⁵. The first of these was the 1997 Treaty of Amsterdam Commission and Council's action plan for implementing it, which indicated a number of

⁴⁴ Boswell, C. (2003): p 626

⁴⁵ Boswell, C. (2003)

implications for 'external aspect' of JHA. Firstly, there was the potential for a stronger international role for the EU, due to its expanded competence in the field of JHA, as mentioned above (this also meant a stronger role for Commission, not just in proposing policy, but also in negotiating agreements with third countries on immigration and asylum issues); secondly – a list of 'measures to be taken within two years' included 'assessment of countries of origin in order to formulate a country specific integrated approach', and also suggested were 'information campaigns in transit countries and in the countries of origin' as means of discouraging illegal migration⁴⁶.

Further, the Austrian presidency of the Council of Ministers produced a controversial strategy paper on immigration and asylum policy in July 1998, which emphasised that the EU had a critical role in the "reduction of migratory pressure in the main countries of origin of immigrants"⁴⁷, through the means including intervention in conflict regions, extended development aid and economic cooperation, and the promotion of human rights.

2.6 Both approaches combined

This Austrian strategy paper was not limited to proposals on prevention, as it also called for increased efforts to combat illegal flows through cooperation with transit countries – both future EU member states (the so-called 'first circle') and transit countries neighbouring actual and prospective EU members (the 'second circle'). Forms of cooperation for these two 'circles' included tools falling under the strategy of externalising control, but for the 'third circle' – the major sending countries – preventive approaches were advocated. For these countries, progress on addressing the causes of migration "should serve as an important criterion when development aid decisions are taken"⁴⁸. So, while prevention did feature in the paper, it was to be combined with already established control instruments.

⁴⁶ Boswell, C. (2003): 627

⁴⁷ Austrian Presidency of European Council (1998, July)

⁴⁸ Pastore, F. (2004) argues that in reality the external relations of the European Union in the migration field are indeed based on different sets of principles, rules and procedures that depend on the group of third (that is, non-EU) countries one considers. In fact, the whole system of external relations of the EU is increasingly grounded on a 'concentric circles model', where the fundamental geopolitical categories are: a) the Enlargement Sphere b) the Neighbourhood and 'Wider Europe' belt; and c) countries with which the Union has some sort of special relationship.

The paper was criticised due to controversial proposals regarding the out-datedness of the Geneva Convention on Refugees⁴⁹, but its main proposals were highly influential, and building on these suggestions, a Dutch government paper later that year proposed setting up a High Level Working Group on Asylum and Migration (HLWG) “to prepare cross-pillar Action Plans for selected countries of origin and transit of asylum seekers and migrants”⁵⁰.

2.7 Failure of the High Level Working Group in its mandate to address ‘roots causes’

The HLWG prepared for the JHA Council meeting in Tampere in 1999 Action Plans for six migrant-sending countries (targeting Afghanistan, Albania; later extended to Kosovo, Iraq, Morocco and Sri Lanka) proposing a range of instruments for the reduction of migration pressures, including measures for the protection of human rights, support for democratisation, the promotion of a constitutional state, social and economic development, combating poverty, support for conflict prevention and reconciliation, cooperation with UNHCR and human rights organisations with respect to refugees’ and asylum seekers’ right to protection, and measures to combat illegal migration. At the JHA meeting in Tampere, the action plans were endorsed and the mandate of HLWG renewed.

However, at parallel meetings, NGOs criticised the Actions Plans as unbalanced, on the grounds that, although intended to address the need for cooperation with the countries concerned in foreign policy, development and economic assistance as well as migration and asylum – they dealt only cursorily and vaguely with preventive measures such as conflict resolution, development and poverty reduction in refugees’ countries of origin; while the main concerns of the Justice and Home Affairs – such as readmission agreements, Airline Liaison Officers, anti-immigration information campaigns and devices for the detection of false documents – were elaborated in great, technical detail⁵¹. Considering that the Action Plans’ most visible measures were directed at the effective implementation of readmission agreements and that the Action Plans appeared to have been prepared without full prior

⁴⁹ Ibid – see Footnote 18

⁵⁰ High-Level Working Group on Asylum and Migration, Final report of the High-Level Working Group on Asylum and Migration, 11281/99 (Presse 288-G), December 4, 1999.

⁵¹ See Castles, S. et al. (2005)

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consultation⁵², the sentiment of beneficiary states was that they were the “target of unilateral [security] policy by the Union focusing on repressive action”⁵³. Others concluded that the migration control imperative had dominated over concerns about sustainable development, human rights and refugee protection (House of Commons international Development Committee 2004)⁵⁴.

Hopes that the HLWG would develop a ‘root cause’ preventive approach had thus been to a large extent disappointed. The focus on control and containment of flows was not surprising, seeing as the HLWG was made up predominantly of JHA officials who had limited experience of dealing with third countries and little expertise on questions of development and conflict prevention⁵⁵. Moreover the HLWG was dependant on the external relations community for implementing proposals on prevention. At least initially, it had no separate budget for implementing its proposals, and needed to rely on cooperation from those working on development assistance or the Common Foreign and Security policy (CFSP) to carry through any proposals on prevention. But officials working on external policy and development were not enthusiastic about cooperating with the HLWG, and these tensions between the HLWG and Commission officials in development and external relations impeded proper coordination.

The work of the HLWG largely stalled between 2000 and 2002. Successive EU presidencies discussed the remit and the future of the HLWG, but these discussions had

⁵² Joint working with NGOs both in countries of origin and in the countries of the EU was also lacking (see Castles et al. (2003)

⁵³ See Peral, L. (2005, May): p 3

⁵⁴ The European Parliament in particular pointed out the inconsistency between the HLWG’s goal of addressing the root causes of refugee flows and measures to curb immigration which could have a detrimental effect on countries of origin.

⁵⁵ In practice, the ‘inter-pillar’ of the HLWG had the implication that the ministries of foreign affairs were represented alongside representatives of ministries of home affairs, justice and/or integration – thus a very broad range of capacities and fields of interests – but that the participating ministries from each country may change over time, resulting in a certain unpredictability and lack of continuity in the working group, where stable alliances and groups of ‘like-minded’, which are typical for example within cooperation on development assistance in the EU, are less likely to stabilise. ECRE (2005, April): p 2

little concrete impact: there was no successful attempt to provide adequate funding for the Action Plans, nor were any new Plans attempted, nor the existing Plans updated⁵⁶.

2.8 Tampere: More far-reaching?

The Tampere Conclusions of 1999 overtook the HLWG initiative. They included the most far-reaching acknowledgement until that time of the need for an external policy focused towards meeting JHA concerns. It is worth considering the wording of the text. As well as emphasising the importance of partnerships with third countries, it declared that

“the European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union”⁵⁷.

Some in the DG JHA favoured an expansive interpretation of this declaration, implying a complete reorientation of (at least certain aspects of) external and development policy to address the causes of migration and refugee flows⁵⁸. Many in the DGs for development and external relations however did not wish to adopt such an expansive definition; concerns were raised about the subversion or distortion of development and external relations goals⁵⁹, and the alternative interpretation favoured by many in these DGs was therefore,

⁵⁶ Boswell (2003) writes that some of problems regarding the HLWG have since been addressed. The HLWG now has its own, however somewhat modest, which rose to 15 million Euro in 2003. It has been using these funds to implement a number of its recommendations, for example two projects designed to encourage Moroccan migrant groups to establish business at home, and one to establish a savings bank for migrant remittances in Morocco. Moreover, it has outsourced much of its analysis to better-qualified experts. In its defence, for all its shortcomings, its attempts to develop plans for implementing preventive approaches – despite their problems as described – are nonetheless likely to have forced the pace of action in this area.

⁵⁷ European Council (1999): point 11

⁵⁸ Boswell, C. (2003)

⁵⁹ Concerns of development and external relations DGs revolved around three main issues: first, apprehension that preventive policies might imply focusing on regions other than those prioritised by existing development strategies; second, concerns that preventive policies might imply reorienting the substance of development policies; and finally, concerns that introducing migration prevention as an important goal of development policy could have a negative impact on relations with third countries.

paradoxically, a more conservative concept of the external dimension. As a result, the development of preventive approaches got off to a slow start.

One of the first tangible effects of Tampere was in fact the inclusion of (control-oriented) readmission and repatriation clauses in the final stages of the Lomé IV negotiations with 77 ACP countries⁶⁰. Readmission clauses and agreements shall be discussed more extensively in Chapter 3 below on Exporting Stricter Border Controls and Readmission Agreements.

2.9 Reassumption of prevention

However, the Commission began to reassume initiative on prevention from early 2002. One reason was an increasing recognition on the part of the external relations and development communities that they would have to take the migration prevention agenda seriously, and that their failure to acknowledge migration prevention goals could lead to missing an opportunity to shape the agenda in this area.

This closer collaboration resulted in a number of initiatives on prevention in 2002. The Commission Communication on 'Integrating migration issues in the European Union's relations with third countries'⁶¹ represented the first real attempt to develop a Commission strategy for targeting external relations tools to address migratory pressures. In this document, the Commission appeared to prioritise preventive over control-oriented approaches, emphasising instead an approach that takes into account the costs and problems for sending countries in managing migration, and promoting the welfare of their nationals residing in EU states. It stated clearly that any strategy to address the root causes of migration would not involve readjusting vis-à-vis recipient countries, nor would it conflict with current "generic development lines". It would, however, imply additional targeted measures aimed at "reducing the timespan of the migration hump". Migration prevention would dovetail with existing development strategies, and request additional funds for any

⁶⁰ A treaty that regulated trade between the European Union and African, Caribbean and Pacific states for the period 1990-2000

⁶¹ European Commission (2002, December)

complementary migration-oriented projects. It was also urged that the EU be more sensitive in its relations with third countries on issues of immigration.

Pastore (2003) writes that the 2002 Communication “marked the European Commission fully adopting a new approach (of ‘migration hump approach’)” - a paradigm shift influenced and partially driven by an in-depth study promoted under the Danish Presidency prior to the Communication. This policy approach took international mobility to be an unsuppressible dimension of development, not simply a ‘side effect’, but rather a “fundamental facet”, which could be utilised for economic and social development. Thus it appeared that the aims of external dimension of migration policies had changed greatly. “Migration started to be increasingly viewed by European policy-makers as a potential vector of social and economic development, rather than just a side-effect of poverty and instability”⁶². Pastore comments that the Communication also displayed a shift from a unilateralist to a negotiated approach to migration and development (M&D) policies, in its relations with countries of origin and transit countries, insisting that the EU “face up to our collective responsibilities and ... meet our shared interests with third countries”.

Another Communication was published in 2003 by the Council⁶³. The Conclusions on one hand stressed the importance of control-oriented measures such as concluding readmission agreements and capacity building of migration and asylum management, but this was now placed in a broader framework that took seriously the interests and concerns of sending and transit countries, identifying ways in which the EU could better reflect the interests of third countries in the field of migration: measures to facilitate brain circulation and avoid brain drain through selective migration; improved ways of channelling and using migrant remittances in sending countries; and better treatment of third country nationals resident in EU states. The European Commission provided a small budget of 250 million Euro to put this agenda into action; the title of the programme is ‘AENEAS’⁶⁴. The potential for and criticisms of this fund are considered in Box 1 on AENEAS.

⁶² Stocciero, A. (2005, February): p 3

⁶³ European Council (2003)

⁶⁴ Regulation (EC) No 491/2004 of the European Parliament and the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of

There thus followed instances of the Commission implementing such an approach, acknowledging the concerns of sending countries in its development strategy for specific third countries. For example, the Commission's country strategy paper for Morocco for 2002-4 included measures specifically targeted at reducing migration pressures in Morocco's northern provinces, which are the source of 40 % of all Moroccan emigration to the EU. The programme granted 70 million Euro to projects designed to "fixer les populations en créant de l'emploi dans les régions source principale de cette émigration" (keep the population in its place of residence through creating employment in the main emigration sending regions)⁶⁵. This was one example of the 'external dimension' truly being able to reflect the interests of the sending country.

2.10 Laeken/Seville/Thessaloniki

However, the effectiveness of these policies in meeting external relations or migration management goals was not the only factor determining policy-making. Domestic electoral political dynamics play a key role in shaping the policy agenda, as well as institutional structures. The European Council summits in Laeken (December 2001) and Seville (June 2002) in fact implied a shift back to a migration control dominated agenda⁶⁶. Both stressed the importance of concluding readmission agreements with third countries, and at Laeken an action plan was called for on integrating migration policy into EU foreign policy, which was to draw on existing proposals on combating illegal migration and the smuggling of migrants. In contrast to the protection-focused Conclusions of Tampere, the Seville Council presented partnerships with third countries chiefly as tools for achieving short-term and medium-term goals. In the 'road-map' following up the Seville Council, none of the 24 proposed measures addressed the root causes of forced migration to the EU⁶⁷. This suggests that political commitment to a root causes approach was fragile. European leaders appear to have been eager to mobilise domestic public support through demonstrating a

migration and asylum (AENEAS) (OJ L 80, 18.3.2004, p. 1).

⁶⁵ Boswell, C. (2003): p 635

⁶⁶ Boswell, C. (2003): p 636

⁶⁷ McKeever, D. et al. (2005)

firm resolve to 'get tough' on sending countries. The 'Seville Agenda' was present again at the Thessaloniki Council in June 2003, where EU member states again stressed the need to monitor the activities of third countries in the fight against illegal immigration.

Moreover, at the Council in Seville, member states abolished those Council meetings dedicated to development discussions and decided on incorporating development and humanitarian issues into a new General Affairs and External Relations Council. The merger was promoted as a technical fix to increase 'joined-up' and transparent decision-making, but it meant in fact that development policy no longer had an independent role in foreign policy and was instead to be considered alongside security and defence, and external trade and aid, creating, as the European Parliament noted, "a risk of development considerations being seen as less important, even ignored"⁶⁸.

2.11 The Hague Programme

In November 2004, the EU set out the new and ambitious five-year Hague Programme, to strengthen freedom, security and justice within the EU. This programme is effectively the EU's agenda for the further development of migration and asylum-related policies, and was decided on by the European Council. Adoption of the Programme coincided with the preparation of the Commission's proposals for the new financial perspectives, supposedly allowing it to ensure coherence between the political priorities defined in the programme and the financial instruments supporting their implementation in the period 2007-2013. Projects on justice, freedom and security issues shall be financed under the external relations assistance programmes (for example CARDS, TACIS and MEDA)⁶⁹. Further, a figure of 5.86 billion Euro for migration areas was proposed by the Commission for the programme, broken down into four funds: the European Refugee Fund – Phase 3 – 1.1 billion Euro; the European Integration Fund – 1.7 billion Euro; the European Return Fund – 750 million Euro; and the European Borders Fund – 2.15 billion Euro (unsurprisingly

⁶⁸ Pabst, R. (2003)

⁶⁹ Note from Secretary-General of the European Commission, to Javier Solana, Secretary-General/High Representative, on a strategy on the external dimension of the area of freedom, security and justice, October 14, 2005

comprising the lion's share). The Commission also proposed a thematic programme for migration and asylum⁷⁰ as a successor to the current AENEAS programme (see Box 1).

In comparing the Hague Programme, which is sometimes referred to as 'Tampere II', it is possible to observe that, in contrast with the comprehensive approach that was originally contained in the former Tampere programme, the notion "that international migration will continue"⁷¹ does not explicitly refer to development human rights and political issues in countries and regions of origin and transit⁷². Rather, the Hague Programme presents the comprehensive approach as a framework involving "all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies". That "asylum and migration are by their very nature international issues", is an acknowledgement that the EU common asylum and migration policy is dependent on the need for reinforced partnership with transit and origin countries, in the field of border management, the fight against illegal migration and human-trafficking, police cooperation, readmission programmes and refugee protection. Such partnership vision contrasts with the one originally found in the Tampere programme. While the partnership was formerly aimed at "addressing political, human rights and development issues in countries and regions of origin and transit"⁷³, since the adoption of the Hague programme, this same notion regards the specific needs of enhancing the capacity of third countries to deal more effectively with refugee protection, the fight against illegal migration, border controls, document security and readmission. Cassarino (2005) writes that the attempt to find incentives and the attempt to define mutual commitments, particularly in the context of the European Neighbourhood Policy action plans, reflects awareness that the development of an EU migration and asylum policy is also dependent on the participation of third countries in the joint management of migration flows, as well as on their capacity to respond to such flows.

⁷⁰ European Commission (2005, August)

⁷¹ Council of the European Union (2004, December)

⁷² Cassarino, J. (2005, October)

⁷³ European Council (1999)

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These mutual commitments and shared benefits expressed within the Hague Programme contrast with the proactive and radical measures that were put forward during the June 2002 Seville European Council⁷⁴. The search for mutually beneficial solutions which could serve the interests of both the EU and third countries is also reflective of the common vision of development that the Commission was trying to promote, with the support of the Council and the European Parliament, by proposing in July 2005 the 'European Consensus on Development'⁷⁵.

Nevertheless, the House of Lords European Union Committee expressed its concern about the tone of the Hague Programme on EU cooperation with third countries⁷⁶. Amnesty International noted that "there is a marked shift to counter 'illegal immigration' through engaging with third countries in ways that blur the fine line between cooperation and pressure"⁷⁷. JUSTICE⁷⁸ criticised the emphasis on EU agreements with third countries on issues such as border controls and readmission, instead of developing third countries' capacity to strengthen protection of refugees, and ILPA (International Law Practitioners' Association) believed that the EU focus was "unduly influenced by self-interest, ie the desire to ensure that refugees and asylum seekers are prevented or deterred from making their way to the territory of EU member states"⁷⁹.

Rhetoric within the Hague Programme on dialogue is restricted to areas of interest to the EU, and mutual commitments and shared benefits are emphasised only in areas where the EU stands to gain; thus 'root causes' and 'prevention' have dropped off the agenda, and development is left to development officials and no longer included as a specific item to be targeted and invested in within the 'external dimension'. Although the concerns of third countries clearly have a significance and are acknowledged as such in this policy approach, the Hague Programme, with its emphasis on the signing of readmission clauses, capacity

⁷⁴ Cassarino, J. (2005, October)

⁷⁵ 'The European Consensus on Development' (2005)

⁷⁶ House of Lords European Union Committee (2005, March)

⁷⁷ Amnesty International (2004, November 2)

⁷⁸ An all party human rights and law reform organization: see JUSTICE (2005, January)

⁷⁹ ILPA (2004, December)

building, and lion's share of finance for strengthening border controls, seems to have taken up an, albeit hybrid, control-oriented approach.

2.12 Communications on Migration and Development, and Regional Protection Programmes: Benefitting migrants?

In September 2005, the Commission produced another Communication on 'Migration and Development'⁸⁰, in which it identified concrete orientations aimed at improving the impact of migration (not asylum) on development; its focus was on three key issues: remittances, the role of diasporas and the brain drain. This Communication would seem to reflect an attempt to turn migration into a shared resource for development in the North and the South of the Mediterranean, and of the awareness that "rather than focusing on reducing migratory pressures, partners should agree on a more strategic approach that aims to optimise the benefits of migration for all partners."⁸¹ It resembles in many ways principles of codevelopment, which are considered in Chapter 4.

It is significant that the concrete orientations outlined within the Communication were not linked to the goals of restricting immigration into the EU (such as have factored in most 'external dimension' policy) but simply acknowledge the positive benefits of migration on development as an end in itself, and call for such benefits to be drawn upon – as such, this Communication was generally well received by NGOs, although of course it still remains to be seen how much of it will be effectively put into practice. However, at least at present, the Commission appears to be in earnest about migration for development (M&D), particularly in view of its desire for the EU to make an active contribution to the 2006 UN High-Level Dialogue on Migration and Development⁸².

Also in 2005, in parallel with its Communication on 'Migration and Development', the Commission released a Communication on Regional Protection Programmes (the broad

⁸⁰ European Commission (2005a, September)

⁸¹ Ibid – see Footnote 77

⁸² Reference is made to such contribution for example in the European Council Conclusions of December 2005 – see European Council (2005, December)

aim of which being to provide protection to refugees in the area of origin). These specific proposals also mark a change in approach, and provide the opportunity to bring real benefits to refugees 'in the region of origin', and at the same time meet the interests of EU member states in reducing flows of forced migration. At the same time, however, such proposals might also be utilised in a more restrictive way, compromising the human rights of forced migrants and acting as a tool to keep asylum seekers out of the EU. These and other contradictory implications will be considered in Chapter 5, 'Protection in the Region of Origin'.

It has been concluded that 'preventive' or 'root causes' measures have been effectively sidelined in the 'external dimension' of EU policy on immigration and asylum. This leads us to the question of what difficulties such an approach may actually imply.

2.13 Prevention in a broader sense

If we define migration prevention in a broader sense, then a number of other EU policies over the past decade and a half can also be seen as relevant⁸³. Indeed, if we interpret the wording of the 'Key Concepts' of the Tampere Conclusions⁸⁴ in such a perspective, the 'root causes' approach could be said to reach such a width that migration policy seems to incorporate almost the whole of development policy, and the whole of European external action.

Financial and technical assistance provided to CEEs since 1989, association agreements with potential EU member states, and the Stabilisation and Association Process with the Western Balkans all went towards enhancing the prosperity and stability of Europe's neighbours, and in doing so addressing some of the causes of migration⁸⁵. The EU's

⁸³ Boswell, C. (2005)

⁸⁴ Ibid – see p 25

⁸⁵ The efforts of the EU and its member states to bring about conflict resolution and reconstruction in Bosnia-Herzegovina and Kosovo were motivated by a range of considerations, but limiting the extent of migration and asylum to EU member states was certainly an important element (Castles et al. (2003)). This may be because the goal of limiting refugee flows has tended to coincide with European foreign policy objectives in

proximity policy towards the former Soviet states and the Mediterranean region (including the Maghreb and the Middle East) are also examples of extensive development assistance and political cooperation which supported economic growth and democratisation. These instruments of external relations – Proximity policy, the Stabilisation and Association Process, and enlargement itself are all instruments of external relations which were motivated, at least partly, by in order to prevent instability and irregular migration from spilling over into the EU. As such, they might be regarded as more or less successful examples of root cause approaches.

As it developed, the 'root causes' approach started to apply not only to just economic push factors, but also to political ones (for example, conflict prevention – the decision to establish a 'no-fly zone' in Northern Iraq in 1991, and creating 'safe havens' in Bosnia a couple of years later, and also 'Operation Alba', in Albania in 1997 – all of these were partly influenced by an unvoiced aim of containing refugee flows; in some cases, as with the Albanian crisis in 1997, they were successful; whilst in the case of Srebrenica, a tragic failure)⁸⁶.

McKeever et al. (2005) assert however that providing durable solutions (for example the 2004 Communication on Durable Solutions⁸⁷), such as enabling sustainable and voluntary repatriation is a reactive measure; it is not a proactive measure which addresses why people flee their homes in the first place. The report argues that addressing the root causes of forced migration in particular, means addressing human-rights violations and violent conflicts in countries of origin, and not limiting onward movement from countries in the region or countries of transit, as is by and large the thrust of current policy, contained for example within the Hague Programme and proposals on protection in the region of origin.

neighbouring regions. The EU's proximity policy aims to limit the spillover of ethnic conflict and instability in neighbouring third countries, which includes limiting large-scale refugee flows. (Boswell, C. (2005))

⁸⁶ Pastore, F. (2003)

⁸⁷ European Commission (2004, June)

McKeever et al. assert that “root causes demand serious engagement”⁸⁸. However, it needs to be acknowledged that, although improving the conditions in source countries might well be in terms of results the best policy option of them all, it is the least well worked out and it is difficult to implement in practice⁸⁹. For example, although most developed states are concerned about forced migration, few of them have the political will to intervene in another state’s affairs to such an extent that is necessary to prevent refugee-producing situations, and furthermore, whether they should be do so is questionable⁹⁰. And, as discussed in Chapter 1 with reference to the ‘migration hump’, whilst inadequate development aid, private investment and debt relief may add to a general environment for conflict (including countries in post-conflict situations), simply reducing overall levels of poverty will not necessarily result in less emmigration and may in fact lead to an increase⁹¹.

In order to pursue such a policy objective as addressing the root causes of migration, coherence is necessary across the EU’s policies in the areas of conflict prevention, Common Foreign and Security Policy, trade, humanitarian and development aid policy, and Common Agricultural Policy; effort is required to promote human rights, good governance and the rule of law in regions of origin and to establish a step-by-step approach for long-term investment in capacity and institution building. Such an approach requires long-term investment and the results are certainly not always clearly tangible. Further, the political will for such an approach needs to be strong, and certainly with regard to trade and the Common Agricultural Policy, such strength can be seen to be distinctly lacking.

2.13.1 Trade restrictions

Access to the market of the developed countries for products originating from developing countries furthers economic development. Trade liberalisation can thus contribute to reducing migratory pressures. Hayes (2004) argues that, “while the Commission is surely

⁸⁸ McKeever et al. (2005): p v

Oxfam’s research in DRC revealed the difficulty of addressing the root causes of a complex conflict which directly involved some six countries in the past eight years. EU action there is focused on holding together the peace. While action to reduce conflict and increase development assistance, humanitarian aid, and security may have longer-term impacts, the root causes of the conflict, such as its regional dimension and competition over minerals exploitation, it reports, have “hardly been addressed by EU donors”.

⁸⁹ Hatton & Williamson (2004)

⁹⁰ Gent, S. (2002, September)

right to emphasise the importance of rural development in developing countries in its most recent paper, one can observe the devastating effect of the EU's Common Agricultural Policy on such rural development. [...] It is striking that the CAP is not directly addressed anywhere in the voluminous EU documentation on this issue, even though the CAP is the only root direct cause of irregular migration that is directly controlled by the EU. With the EU giving more funding to each European cow than the average income of each human in some developing countries, how much irregular migration has resulted from this policy?"⁹²

In response to the events in Melilla and Ceuta, where the sudden influx of migrants at the border between Spain and Morocco resulted in the deaths of eleven persons in late September 2005, African Union head Alpha Oumar Konare claimed that "walls and prisons" were not the solution to the problem – people were migrating because of impoverishment; and he called on EU to keep its promises to open its markets, to cut subsidies and drop tariffs⁹³. Along the same lines, an amusing but telling comment was made on the High Level Working Group Action Plan on Morocco at a conference in 2001: "if you don't want to allow Moroccan tomatoes to enter, well, you'll get Moroccan people"⁹⁴.

In a similar vein, the Greens/European Free Alliance (2001) assert that "the world economic system continues to allocate resources from the South to the North. It constitutes an inescapable totality and is the foremost reason for the existence of autocratic regimes and for deadly conflicts in many of the poorer regions of the world, which likewise constitute the main reason for forced migration both within these regions and, to a much lesser degree, to the industrialised countries". They claim that, as it the fact is that it is almost exclusively the "so-called triad of countries (EU, USA, Japan)" which profit from the world economic system, those countries should have an obligation to face the negative impact of that system.

⁹¹ Nyberg-Sorensen et al (2002)

⁹² Hayes, B. (2004, November 13): p 1

⁹³ BBC News (2005, December 10): EU boosts aid to Africa by \$10bn.

Whilst it is clear that there is not the political will between EU member states as yet to open trade to such an extent to developing countries as to negate the effects of restriction on migration, and that also in this case the interests of developing and developed countries clearly do not coincide to a sufficient degree to drive policy forward on such issues, despite the overriding desire of EU member states to decrease illegal migration, and despite much discussion on the impact of trade restrictions on developing countries, Niesson (2003) recommends that there at least be increased contact between the Directorate General on trade with those on development and external relations.

2.13.2 Arms-trade

Another factor to be considered in connection with this, are arms-trade policies. Arms transfers may be crucial to support the legitimate security needs of a state; however, if arms transfers should not undermine development and increase the likelihood of forced migration, potential security benefits must be weighed up against the long-term development needs of the country, and the human rights of its people. Castles et al. (2005) in their report for Oxfam state that often the funds that developing countries spend on arms and military equipment could instead be used to support on-going development projects, and recommends that arms transfers should be allowed only to countries with governments and accountable armed forces which are trained to uphold the standards of international human rights and humanitarian law. It mentions that there are many major arms suppliers in the EU, three of the six largest in the world being the UK, France, and Germany, and some of which continue to take part in arms deals without consideration for the long-term consequences.

2.13.3 Push factors

Finally, it should be noted that, within discourse on the roots of migration, such roots seem to lie exclusively in the ground of the countries origin – what are called ‘push factors’. There is however not enough talk in Europe of another powerful set of root causes which

⁹⁴ Abdelkrim Belguendouz, University of Rabat, at ‘Frontières et zones d’attente, une liberté de circulation sous contrôle’, Palais du Luxembourg, 19 -20 October 2001, ANAFE.

operate there, in large cities – ‘pull factors’, such as the growing share of ‘black labour’ in European economies. These issues will be discussed in Chapter 4.

2.14 The necessity for coherence and ‘joined-up’ policy-making

Migration relates to many issues, including security concerns, HIV/AIDs, environmental degradation, international trade, agricultural subsidies, gender inequality and arms exports. Policies which to manage migration will have impacts in other areas, and vice-versa. Castles et al. (2005) have commented that the debate on migration and development is at the stage where the trade and development debate was ten years ago; people are beginning to say that there is a development dimension to migration, but there is a lack of ‘joined-up’ thinking at national and international levels, and some resistance to connecting the issues.

‘Joined-up’ migration and asylum policies should connect concerns about trade, development, conflict prevention and resolution, and security – and should do so within a framework of genuine cooperation and partnership with countries⁹⁵. Interventions need to be based upon a conceptualisation of migration as involving a set of transnational phenomena involving migrants, states, supranational institutions, and networks linking migrants in the countries which they move to with the countries they migrated from. McKeever et al. (2005) state that there is a need for greater internal consultation on migration policies (which are traditionally inward looking) with colleagues in foreign-affairs and development ministries or directorates on development policies (which are outward looking), balancing migration control with respect for international obligations. There is also a need for external consultation with international organisations and NGOs who have direct and contemporary experience of the realities of migrants’ situations, which can be utilised as an important resource for policy makers.

Coherence is further required of EU policy. A declaration annexed to the Treaty of Amsterdam states that “consultation shall be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters

⁹⁵ Geddes, A. (2004, October)

relating to asylum policy". The call has been repeated by the European Council and by the Parliament. Moreover, in the draft EU Constitution there is an even clearer formulation, where it is stated that "The union shall ensure consistency between the different areas of its external action and between these and its other policies"⁹⁶.

Despite the above, ECRE (2004) argues that the EU's domination of JHA concerns (to prevent irregular migration to the EU) rather than concerns for development, humanitarian assistance, or human rights and improving refugee protection in third countries, has led to a lack of coherence between the 'external dimension' of EU policy on migration and its human rights and development cooperation policies and objectives. As noted above, also NGOs and civil society associations have historically been reluctant to cooperate on migration issues, worried that security-oriented and 'fortress-type' attitudes could divert resources from development concerns towards control and repression of migration flow.

Further, the EU's attempts to take joint action on 'root causes' of migration have also been ineffective because of a lack of investment and consultation with the countries concerned. This lack of coherence can exacerbate the conditions that cause refugees to flee. For example, when the embargo on arms sales to Libya was removed in the interests of controlling migration, this home affairs agenda contradicted with human rights, humanitarian and development objectives.

However, it is not necessarily always clear how different elements of EU policy where (particularly forced) migration and development come together can complement each other⁹⁷. Because of the tensions between the interests of JHA, external relations and development in these areas, the points at which such interests intersect need monitoring at the EU level. Signs of greater understanding between JHA and other interests have appeared, for example as seen in the AENEAS programme, and in calls for better cooperation with states of origin (see for example European Commission Communication

⁹⁶ Peral, L. (2005, May): p 11

⁹⁷ Castles et al. (2005) cite the examples of HLWG, the AENEAS programme, Humanitarian Aid and LRRD (Linking Relief, Rehabilitation and Development), and proposed EU resettlement schemes and Regional Protection Programmes.

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on “A strategy on the external dimension of the area of freedom, security and justice”⁹⁸, which places an emphasis on dialogue). It is not realistic to expect policy makers who have experience only of domestic asylum procedures and border controls to develop innovative projects for overseas development, and thus information sharing between policy areas is hugely important at all stages of project development, implementation, and evaluation, as well as utilisation of the expertise of stakeholders in the countries concerned; in particular, it is recommended by McKeever et al. (2005: p vi) that the proposal made by the Commission in 1994, to see refugees themselves as a potential source of information on their countries of origin, should be revived.

Box 1

AENEAS

A new budgetary line which was created in the EU General Budget in 2001 (article B7-667), for the first time permitted the funding of projects within the external dimension of migration and asylum policy. Funding priority was given to projects related to management of migratory flows, voluntary return, efficient fulfilment of obligations arising from readmission, and the fight against illegal immigration, to be implemented in those countries for which HLWG had developed an Action Plan, including Albania, Morocco and Iraq. The approach soon lost its geographic specificity and Article B7-667 became a horizontal programme and the origin of the present AENEAS Programme, which replaced it for the period of 2004-8 by AENEAS, with a budget line of 250 million Euro⁹⁹, which aims to give financial and technical aid to third countries to support their efforts to improve the management of migration flows. It encompasses five objectives: the development of migration legislation (admission, rights, integration, anti-discrimination) in third countries; the development of legal immigration channels in accordance with the demographic, economic and social situation in countries of origin; the development of refugee protection in accordance with the Geneva Convention and the New York protocol; preventative measures and legislation against illegal immigration, human trafficking and smuggling; and

⁹⁸ European Commission (2005, October)

⁹⁹ Regulation (EC) No 491/2004 of the European Parliament and the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS) (OJ L 80, 18.3.2004, p. 1)

readmission and durable reintegration of returnees. The Commission announced that AENEAS will now be a principle source of funding for the European Regional Protection Programmes (see Chapter 5).

AENEAS is regarded as an effort to build better partnerships with third countries and regions on migration and asylum matters, but containment can still be seen within that as a motivation, evidenced particularly by the emphasis on readmission agreements¹⁰⁰ – the AENEAS programme was particularly intended for those countries actively engaged in the preparation or in the implementation of readmission agreements with the EU. A variety of activities may be supported by AENEAS, including measures to improve capacity in third countries in the areas of migration and asylum policy, the development of legislation, information campaigns, the dissemination of information on legal migration channels, the establishment of regional dialogue, the socio-economic reintegration of migrants, promoting migrants' contribution to the development of their countries of origin, and so forth.

With regard to positive aspects of the AENEAS budget line, it demonstrates a considerably expanded commitment by the EU to addressing migration issues in external policies. While the outcomes of the AENEAS programme will take time to materialise and need scrutiny, the programme does seem to mark a more constructive effort to reconcile different interests within the EU, and a more healthy approach to partnership with the developing countries concerned. Further, Peral (2005) writes that, being that one priority is the “development of third countries’ legislation and national practices relating to international protection”, with explicit mention of the Geneva Convention of 1951 and its Protocol, this can be “an opportunity, although adequate means have yet to be identified, to revitalise International Refugee Law (IRL) from – but not within – the EU”¹⁰¹.

However Stocciero (2005) cautions that the potential added value of the AENEAS programme would be more relevant if networking and coordination with national member

¹⁰⁰ Peral, L. (2005, May)

¹⁰¹ Peral, L. (2005, May): p 4

states and sub-national activities were pursued more systematically and with greater determination. She cites numerous structural shortcomings¹⁰² as undermining the efficiency and efficacy of migration for development initiatives, and argues that in order to increase the overall coherence in the AENEAS programme, a clearer separation and articulation of the objectives and actions which are to be undertaken in the Community's own interest (ie in the field of migration control and migration law enforcement), and those which are to be undertaken in the interest of third countries, with regard to the migration development nexus (M&D policies), is needed. Such a solution would prevent possible ambiguities that could otherwise discourage the participation of migrant associations and some countries of origin. An even more proactive argument would be that, considering that the legal basis of the instrument is under the heading of the community's cooperation and development policy with third countries, more political emphasis should be accorded to the development oriented objectives, and development oriented components could also be incorporated in the 'control' oriented objectives and actions. Nonetheless, the potential within AENEAS for interests of sending, transit and receiving (EU) countries, is to be welcomed.

2.15 Overview

In the evolution of the 'external dimension' of EU policy on migration and asylum, it has been seen that, overall, member states' concerns have particularly focused, or rather, predominated, on readmission and return rather than measures in countries of origin to address 'root causes'. Initially, cooperation was viewed as a necessary component of the overall strategy of managing migration more effectively, but its aims and priorities were still defined in terms of immigration controls – or 'exclusion' – and the agenda was set by Justice and Home Affairs¹⁰³. The underlying priority of the Directorate General JHA is to create an 'Area of Freedom Security and Justice' (AFSJ) within the Union, and the consensus between EU policy makers and member states seems to be that creating an AFSJ

¹⁰² For example, isolated actions, excessive sectorialisation, and lack of long-term planning and sustainability.

¹⁰³ Pastore, F. (2004)

within the EU requires limiting the number of illegal immigrants and asylum seekers arriving and remaining in the EU.

It has been argued that a new and more productive phrase in the external dimension of European migration policies would require efforts to be broadened beyond control-oriented, unilaterally inspired measures and JHA interests. Not only would there be a more realistic appreciation of the international dimension, but in turn it would bring a better understanding of the interests of source and transit countries, and how these might coincide with those of receiving EU states and EU immigration control priorities. This is possible to achieve only through expanding the framework for negotiations¹⁰⁴.

A shift has in many ways already begun, as might be identified in the December 2002 Commission Communication¹⁰⁵. But from some positive and inclusive explorations of root causes by EU policy makers, there has been also been shift in debate away from 'root causes' of migration from countries of *origin*, to 'root causes' of migration from countries of *transit* to the EU – marked for example by the control-oriented focus of the Hague Programme and the emphasis of the European Neighbourhood Policy.

There are also indications that repressive measures may dominate preventive ones in the years to come¹⁰⁶. Repressive measures gain more popular resonance for European governments, who are thus able to reassure electorates that they are being tough on irregular migration. By contrast, it takes a long time to see the effects of preventive measures, and their results are less tangible. Also, a renewed emphasis on combating terrorism may likely provide a renewed impetus for restrictive approaches. Although the Commission seems aware of the risks of securitisation and the image of 'fortress Europe', policy in this area is mostly formed by JHA ministers and heads of EU member states. Whereas Commission documents generally attempt to find a balance between the need to limit irregular immigration, and principles of human rights and refugee protection, the

¹⁰⁴ Pastore, F. (2004)

¹⁰⁵ European Commission (2002, December) - see Castles et al. (2005)

¹⁰⁶ Boswell, C (2005)

Council and Presidency documents reflect the more restrictive position of member states¹⁰⁷. This is reflected in Hague Programme, control-oriented and agreed upon by heads of EU member states, and the 2005 Commission Communication on 'Migration on Development', which took an altogether contrasting approach towards migration.

It may be argued that the difficulties, huge investment involved, and conflicts with member states' interests, have meant that 'root causes' have inevitably become merely a distant objective in the rhetoric of policy on the 'external dimension' of immigration and asylum, whilst in practicality such matters as human rights protection, good governance, and economic development are left aside for development bodies to get along with, and are no longer targeted specifically in actions relating to migration. External actions now are focused on control-oriented objectives such as readmission and capacity building, but the necessity for partnership with third countries is still recognised (albeit restricted to and motivated by those issues where the EU's interests are concerned), particularly by the Commission, as well as the fact that the interests of those states may well not coincide with those of EU member states in their fight against illegal immigration. Thus positive incentives are being searched for. Moreover, it would appear that the Commission is taking on board the debate on migration/development (M&D) policies, at least within the context of its 2005 Communication and its desire to contribute to the debate within the context of the 2006 High Dialogue, and it may be that it will develop more of a 'codevelopment' approach. This shall be examined further in the following chapters, which shall concentrate on concrete policy areas of the 'external' dimension on asylum and immigration, namely

¹⁰⁷ Hurwitz (2003) criticises that the insularity and high-handedness of the EU's approach: this is apparently the only area of EC external relations where the Commission proposes (and the Council approves) negotiating mandates without first ensuring through informal contacts by the commission and council Presidency that the other party wishes to negotiate an agreement on the subject. Indeed the European Parliament has protested on a number of occasions that it is not allowed a say in the negotiation of readmission agreements.

Further, Boswell (2003) cautions that the the Commission's interest in prevention should not be taken for granted, as it is contingent on two central factors: the availability of additional resources (the Commission has insisted that complementary preventive measures require extra funds: if these are not forthcoming efforts could remain largely symbolic); and political pressure from the European Council (this is the reason the Commission took up the preventive agenda in the first place). Thus, where European Council summits fail to show a commitment to developing a preventive agenda, Commission engagement is likely to lessen.

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the exporting of border controls and readmission agreements; return and repatriation in connection with circular migration; and Regional Protection Programmes.

Chapter 3: Exporting Stricter Border Controls and Readmission Agreements

It has been shown in the last chapter that control-oriented policy measures have dominated the 'external dimension' of EU policy on immigration and asylum. Two typical such measures are the exportation of stricter border controls in conjunction with readmission agreements. This chapter shall concentrate on these measures, in particular those of readmission, and consider their impact on EU member states, sending/transit countries and on migrants themselves, considering whether they are able to deliver the EU's intended objectives, how they pose problems with respect to human rights protection and compromising the goals of development cooperation (with respect to negative conditionality), and whether positive incentives result in benefits for the countries involved.

3.1 Border controls

It appears that, partly because of increased security concerns, ever-greater proportions of EU external funds are being directed towards regions bordering the Union. Even if the development needs of further away regions may be significantly greater, a desire to broaden EU markets and create stability among the 'near neighbours' means that the EU focus is on creating 'buffer zones' in the CFSP context. The Hague Programme led to the establishment of the European Agency for the management of operational cooperation at the External borders (FRONTEX), which as we saw above has gained the lion's share of the new fund created under that programme. EU policy can have very direct effects. Morocco and Tunisia are just two examples of states which have introduced more rigorous border controls and measures to combat trafficking under pressure from EU member states. Between 2002 and 2004 a programme to combat irregular immigration from Morocco was developed with around 50 million Euro funding¹⁰⁸.

¹⁰⁸ Geddes, A. (2004)

Pastore (2003) writes that the temptation to centre the external dimension of EU migration policy on large investments in border controls in a belt of buffer states situated around Europe is very strong, but moreover “it is particularly worrying as most of these external agents of EU migration controls are certainly not reputed for their embedded liberalism”; thus human rights may be compromised. Further, Geddes (2004) explains that the imposition of strict controls is liable to produce sub-optimal outcomes such as people smuggling and human trafficking.

In addition to this, such an approach leads to imposing externalities on non-state actors – the 1990 Schengen Implementing Agreement, rules in its Article 26(1)(a) and (2) “If aliens are refused entry into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again.”¹⁰⁹ By introducing carrier liabilities, original state responsibility such as ensuring that people have valid visa documents to enter its territory has been transferred to private actors, mostly airlines. Through this, the EU’s border is moved away from the physical border, towards a factual one in the interior of third countries’ territories, and has imposed responsibility for policing the border abroad on the private sector. As a result, immigration control already takes place in the country of departure.

The risk is that, without a guaranteed and tight ‘net’ of human rights conditionality, the ‘external dimension’ of EU migration policy will result in the large scale outsourcing of police functions, to perhaps dubious and unaccountable ‘guardians of the gate’¹¹⁰.

We shall now look at one particular way in which responsibility for immigration control has been exported, namely, readmission agreements.

3.2 Readmission agreements

¹⁰⁹ Besides a fine for transporting refused person to EU territory without permission, penalty includes obligation to bear costs for the detention of the individual and to return the person back to his/her starting point. Lavenex, S., Ucarer, E. M. (2004): p 14

¹¹⁰ Pastore, F. (2003)

The official embracing of root causes approaches and the creation of the High Level Working Group had given rise to a hope that the EU would implement more balanced policies, using a combination of both control and long-term preventive measures. These expectations were not met as explained above, and containment objectives were again said to be dominating the EU agenda. Readmission agreements are the especially favoured method of control, combined with the concept of 'safe third countries'¹¹¹. The European Union has been actively encouraging the expansion of readmission and return policies. The EU has also introduced readmission clauses in co-operation agreements, linking thereby collaboration in the fields of asylum and migration with the provision of development aid¹¹².

The practice of sending back irregular migrants to their countries of residence or through which they travelled was first initiated by Germany, in a bilateral agreement with Poland of 1991¹¹³. Readmission agreements consist of a mutual undertaking by each party to take back without formalities certain categories of persons at the other party's request. Their main purpose is to combat illegal immigration, but these instruments are now a tool for the swift expulsion of asylum seekers as well (as countries with which a readmission agreement has been signed are deemed generally to be 'safe third countries'). The aim is to avoid a situation where the removal of illegal migrants from the EU is delayed or even prevented by the refusal of countries of origin to readmit their nationals¹¹⁴. Readmission agreements usually cover procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution, although the exact nature of these procedures can vary.

Readmission agreements used to be bilateral because the important differences in the legal systems of the member states meant that the elaboration of multilateral instruments was too difficult. From 1993, the number of bilateral readmission agreements targeting the removal

¹¹¹ Whereby for example an EU state will send back without examining their claim any asylum seekers coming from a third country which is regarded as supposedly 'safe' in terms of human rights protection.

¹¹² Hurwitz, A. (2003)

¹¹³ Boswell, C. (2005)

¹¹⁴ McKeever et al. (2005)

of irregular migrants and unsuccessful asylum seekers increased significantly¹¹⁵. Since the entry into force of the Treaty of Amsterdam in May 1999, the EU has become competent to negotiate and conclude readmission agreements with third countries. Multilateral agreements involving the EU are likely to be more effective from the Union's point of view, because they will carry more weight than bilateral ones. The EU's weight backed up for example acceding member states which still lacked deeper political and economic ties with countries of origin allowing them to exert more pressure on third countries.

Some commentators have observed that the conclusion of readmission agreements has indeed established a 'buffer zone' around the EU's borders¹¹⁶. Readmission agreements are part of what an EU Strategy Paper called 'a model of concentric circles of migration policy'¹¹⁷. Pre-embarkation checks are geographically the outermost of three circles of enforcement and the Schengen border is the innermost. The network of readmission agreements is the middle circle.

The Council adopted two Conclusions on readmission clauses in Community agreements, and in mixed agreements¹¹⁸. In agreements between the EU and a third State, the clause takes the form of a declaration in the final act with the commitment of the third State to enter into readmission agreements with EU member states, and is usually limited to the readmission of nationals. In the case of mixed agreements, ie agreements between the EU and the member states, on the one hand, and a third state, on the other, the fight against illegal immigration is regarded as one of the essential objectives of the agreement, enabling the contracting parties to suspend the treaty in the case of non-compliance. The clause provides that the third state will commit itself to conclude an agreement for the readmission of its nationals, of third country nationals and stateless persons, without any mention of state's obligations under the 1951 Geneva Refugee Convention.

The standard 'enabling clauses' were modified following the entry into force of the Treaty of Amsterdam,⁴⁸ and will be inserted in all future agreements. Such clauses have been

¹¹⁵ Lavenex, S., Ucarer, E. M. (2004): p 10

¹¹⁶ Lavenex, S., Ucarer, E. M. (2004): p 10

¹⁷ Austrian Presidency of European Council (1998, July)

included in agreements with Algeria, Armenia, Azerbaijan, Croatia, Egypt, Georgia, Lebanon, Macedonia, Uzbekistan, and the Cotonou Agreement with ACP countries.⁴⁹ 'There are now over 100 such agreements that exist creating what has been called the 'buffer zone' or the 'cordon sanitaire' of Western Europe'. So far, the EU has concluded readmission agreements proper with for example Hong Kong, Sri Lanka, Russia, Albania, and Macao; in October 2005 it concluded a readmission agreement with Russia, and is in negotiations with Morocco, Ukraine, Turkey, Pakistan, China, and Algeria¹¹⁹.

Target countries for the conclusion of readmission agreements have been identified on the basis of criteria progressively developed by the Member States and then agreed upon by the Council of the European Union. Six selection criteria were identified, based on the migratory pressure exerted by persons coming from or transiting through these countries, geographical balance, and the chances of successful implementation.¹²⁰

3.3 EU readmission agreements as a priority

The European Council Conclusions at Laeken on 14/15 December 2001, Seville on 21/22 June 2002 and Thessaloniki on 19/20 June 2003, called for the integration of migration in the external relations of the European Union, characterised the co-operation of third countries in the field of readmission as being of paramount importance to such management, and explicitly called for the speeding up of the conclusion of the agreements currently being negotiated, the approval of new priorities and the conclusion of Community readmission agreements with further relevant third countries.

The priority given to readmission agreements was made explicit also in the draft EU Constitution. The (unratified) Constitution's wording reflected a trend to apply readmission

¹¹⁵ Hurwitz, A. (2003)

¹¹⁹ McKeever et al. (2005)

¹²⁰ Council of the European Union, 'Criteria for the identification of third countries with which new readmission agreements need to be negotiated: Draft Conclusions' Doc.7990/02, 15 April 2002.

agreements not only to nationals of the countries in question, but also to persons who may have travelled through these countries on their way to the EU¹²¹.

Such priority was also stressed within the 2004 Hague Programme, which urged "implementing readmission obligations, as provided for, inter alia, in Article 1 of the Cotonou Agreement." The Commission also in 2005 followed the Hague Programme's recommendation to appoint a Special Representative for Readmission Policies, Mr Karel Kovanda; and speeding up progress on readmissions was a further priority for the UK Presidency of the European Council¹²².

3.4 Readmission agreements and development cooperation

In terms of aid, the EU is the biggest multilateral donor of all. Aid is included under the EC budget's 'External Actions Heading' (Heading 4). According to the European Consensus on Development¹²³ the primary and overarching objective of EU development cooperation is the eradication of poverty in the context of sustainable development, including pursuit of the Millennium Development Goals (MDGs)¹²⁴. The EU has adopted a timetable for member states to achieve 0.7% of GNI as overseas development aid by 2015, with an intermediate collective target of 0.56% by 2010. These commitments should see annual EU aid double to over 66 billion Euro in 2010. The Consensus further states that urgent attention will be given to commitments and action on migration. In this respect, the Commission will aim to include migration and refugee issues in country and regional strategies and partnerships with interested countries and to promote the synergies between migration and development.

Developments have however led to the view that migration and security policies of the EU are 'contaminating' the international development agenda by making aid and trade increasingly dependent upon migration control¹²⁵. The criticism runs that in the longer

¹²¹ McKeever et al. (2005)

¹²² Eurasyum (2006, January)

¹²³ The European Consensus on Development' (2005)

¹²⁴ Boswell, C. (2005)

¹²⁵ Hayes, B. (2004, November 13)

term this will result in developing countries diverting resources to meet these obligations – and that this approach contradicts and will undermine development policy, reproducing rather than alleviating inequalities. Geopolitical allegiances, trade interests and security imperatives are all distinctly non-developmental priorities, and it is criticised that they are responsible for both a long-term shift in EC regional funding towards Europe's near-abroad, and also more recent efforts to redefine overseas development aid spending criteria in terms of anti-migration and counter-terrorist objectives¹²⁶.

One example cited is the EU's demanding the insertion of a clause on readmission and repatriation during the final stage of the negotiation of the Lomé Convention on aid and trade¹²⁷. The ACP countries argued that there was no basis in international law for such a demand but signed the agreement in February 2000. Its successor is the Cotonou agreement, which will run from 2007-2020, and with regard to the imposition of readmission agreements it strengthens the EU's position - the EU will no longer sign any association or cooperation agreement unless the other side agrees to these standard obligations¹²⁸.

3.5 Seville European Council meeting 2002: joint clauses on readmission within cooperation agreements

The Seville European Council Conclusions of 2002 urged that a "clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration should be included in any future co-operation, association, or equivalent agreement which the EU concludes with any country" (that is, agreements on trade, development co-operation, etc). The Seville Council also called for assessments of relations with third countries which do not co-operate in combating illegal immigration, and suggested that failure to co-operate in this way would "hamper the establishment of closer relations". During the Council meeting some member states, including the Spanish

¹²⁶ BOND (2005)

¹²⁷ The convention regulated trade between the European Union and African, Caribbean and Pacific states for the period 1990-2000.

¹²⁸ Peers, S. (2003, May)

Presidency, called for a 'negative migration conditionality', ie for the EU to reduce development assistance to third states which fail to cooperate in combating illegal immigration. Indeed, the German Chancellor Gerhard Schröder later commented, "I would have liked to see more sanctions introduced against uncooperative countries."¹²⁹ While the Council Conclusions that were finally adopted took a more cautious approach, stressing that measures taken against uncooperative countries must not jeopardise development objectives¹³⁰, the Seville Conclusions nevertheless indicated a connection between the negotiation of development agreements and of readmission agreements.

This approach was reinforced by a Communication from the Commission in 2002 on integrating migration issues in the EU's relations with third countries that stated that dialogue on these matters should be "fundamentally incitative by encouraging those countries that accept new disciplines, but not penalising those who are not willing or not capable to do so"¹³¹. The Commission "considered it necessary to systematically evaluate the relations with those third countries which do not cooperate with the EU in the fight against illegal migration, while fully respecting the integrity of EC Development Cooperation objectives".

3.6 Consequences of failure to cooperate?

It is not yet clear what would be the practical consequences for a third state found not to be 'adequately co-operating' with the EU in the fight against illegal immigration, but McKeever et al. comment that, "given the context in which these evaluation mechanisms are being developed, however, there is a serious risk that they will emphasise cooperation (or the lack thereof) in measures related to border controls and interception, while third countries' compliance with international refugee and human rights law will be given far less attention."¹³² This would indeed be a worrying development

¹²⁹ See McKeever et al. (2005)

¹³⁰ in case of unjustified lack of cooperation, the Council "may [...] adopt measures or positions under the Common Foreign and Security Policy and other European Union policies while [...] not jeopardising development cooperation objectives." European Council (2002)

¹³¹ European Commission (2002, December)

¹³² McKeever et al. (2005): p 41

More worryingly, in the run up to decision-making on the EU Financial Perspectives for 2007-2013, Malta insisted that European Union development aid must be accompanied by obligations on the part of third countries on tackling illegal immigration, ie that there must be conditionality tied to EU development aid. Whilst it was reported that the majority of member states agreed with Malta's position, the Commissioner for Development and Humanitarian Aid, Louis Michel, following a public consultation on the future of the European development policy, stated clearly that "development policy should not be used as leverage for readmission agreements".¹³³ This is surely right, but it should be noted that such a reassurance serves to illustrate the contrasting positions, as described in the first chapter, of many member states on one hand, and development officials on the other.

Member state practice also indicates a preference on the part of some EU members to connect directly the provision of development aid with the fulfilling of obligations regarding the control of migration. There have been allegations relating to such connections with development aid regarding Belgium, Ireland¹³⁴, Denmark¹³⁵ and the Czech Republic; and in the case of Switzerland (albeit not an EU member state) its House of Representatives decided in May 2004 that the Federal Council could partly or fully cancel official development cooperation with states that were unwilling to cooperate by their nationals¹³⁶. It is difficult to state categorically that aid is being made conditional upon signing such agreements, as negotiations tend to take place behind closed doors; further, pressure may be put upon developing countries when negotiating development agreements in a somewhat less explicit form.

¹³³ timesofmalta.com (2005, December 6). NGOs oppose Malta's stance on EU development aid. Retrieved January 12, 2006

¹³⁴ Irish Department of Foreign Affairs (2001, August 13). Press release: Minister of state rejected unfounded allegations that Ireland will provide IR pounds 8.8 million to Nigeria conditional upon signature of the forthcoming readmission agreement

¹³⁵ There was some criticism in 2003 surrounding a governmental delegation to Afghanistan that was taken to indicate a link between the level of Danish development aid to Afghanistan and the willingness of the Afghan government to enter into readmission agreements concerning Afghan asylum seekers: ECRE (2003). Country Report: Denmark. Retrieved January 12, 2006 from http://www.drc.dk/fileadmin/uploads/pdf/English_site/Publications/ecre_03.pdf

Before we turn to more positive opportunities in connection with readmission agreements, some further criticisms should be mentioned.

3.7 Objection to negative conditionality

This first criticism makes clear the objection to making development conditional on migration control obligations. Readmission clauses are modelled on human rights clauses, introduced in cooperation agreements in the 1980s, and which enable the EU to suspend aid in cases of gross human rights violations. While 'human rights conditionality' was supported by most NGOs, this was not devoid of criticism either. The suspension of aid can arguably lead to a downward spiral rather than improving the situation; moreover, it was pointed out that the application of such clauses requires detailed monitoring and follow-up on the ground¹³⁷. The same applies even more so to readmission agreements, and the movement towards making development agreements dependent on cooperation with migration control as highlighted just above is objectionable.

As the House of Commons International Development Committee pointed out,

"The UK and other donors rightly use the aid relationship as an entry point for policy dialogue, on migration as well as other issues. It is sensible to support governments which are moving in the right direction, improving governance and fighting poverty, but it would be a mistake to make aid conditional on measures which aim to limit out-migration. Withdrawing aid to countries which fail to limit out-migration would simply plunge them further into poverty; threatening such a withdrawal would force developing countries to spend scarce resources on border controls rather than on poverty reduction, would undermine any notion of partnership, and would simply succeed in pushing more migrants into the arms of smugglers and traffickers. Development assistance or the threat of its withdrawal must never be used as a tool for migration management."¹³⁸

¹³⁶ Swiss Coalition News No. 39 (2004, June). Opportunism and short-sightedness. Swiss Coalition News No. 39

¹³⁷ See Castles, S., Loughna, S. (2002, April): p 23

¹³⁸ House of Commons International Development Committee (2004): 5.162

Poverty reduction is the overreaching objective of development assistance as stated above¹³⁹, and thus development assistance should arguably not be used in furtherance of migration aims. Although it is the case that negative conditionality as proposed at the Seville Council of 2002 and by Malta in 2005 has not been accepted by the EU at large, it is worrying that such proposals have been put forward, and they are indicative of the intentions of some member states.

3.8 Asymmetry

The question of asymmetry in relationships when negotiating readmission agreements is also pertinent. Although both sides accept to take their nationals back, it is hard to imagine many EU citizens irregularly residing in neighbouring countries such as Morocco, Ukraine or Turkey, which brings us to the question of equality of the negotiating parties.

Lavenex and Ucarer (2004) raise further questions in connection with this: How can the EU reach such agreements with non-member states assuming that they have contradicting interests? Which basis for negotiations do the mostly under or undeveloped non-member states have? Under which circumstances can a third country refuse to readmit any migrants? And in which way do the readmission agreements impact differently on countries with dissimilar migratory situations?

They go on to illustrate the highly asymmetric relationship between particular EU and origin and transit countries, citing a dependence rather than interdependence driving the rapport between both sides, based on two factors: the nature of political association, and the intensity of economic exchange. The examples given are of Turkey, Morocco, Albania and Ukraine, as four countries confronted with the demand for readmission agreements. The relationship between these countries and the EU is in all cases defined by their character of being both transit and sending countries. They all have strong political ties to the EU but in very different forms of associations. While Turkey is hopeful of negotiations with the EU

¹³⁹ And as reflected in donor states' aid policies, the guidelines of the OECD development Assistance Committee (DAC), and the MDGs.

for its eventual admission into the EU, Morocco awaits gradual trade liberalisation, and Ukraine seeks to change bilateral cooperation with the EU from the form of partnership to an association relationship. Furthermore, all countries are strongly dependent on the EU in economic terms. Lavenex and Ucarer conclude that "this rough illustration of the asymmetric relationship between the EU and 'disenfranchised members' gives at least a tentative idea of the leverage the EU has at its disposal by means of its strong economic weight as an efficient tool in its endeavour to externalise its migration and asylum policy goals"¹⁴⁰.

While it may seem at first that this situation has weakened the bargaining position of third countries, Hurwitz points out that these countries could turn this new situation to their advantage, and demand further economic aid in exchange for their cooperation on migration a compromise laid down in the Cotonou agreements¹⁴¹ which provides that the EU may negotiate the readmission of third country nationals with each individual ACP State.¹⁴²

3.9 Human rights protection

Another criticism exists with respect to human rights protection: current readmission agreements contain no adequate provisions regarding the protection which should be granted to refugees from third countries in accordance with international commitments, primarily the obligation of *non-refoulement*¹⁴¹. The EU Recommendation only mentions that the 1951 Geneva Refugee Convention, its 1967 Protocol, and the European Convention on Human Rights shall not be affected by the agreement, but it neither requires parties to become parties to these instruments, nor to implement them.¹⁴² Chain readmission may lead to the violation of the customary right to seek and enjoy asylum from persecution. In these agreements no procedure provides for the examination of the human rights record of countries where migrants are returned to, nor is a procedure foreseen for establishing

¹⁴⁰ Lavenex and Ucarer (2004): p 11

¹⁴¹ *Non-refoulement* is the principle of not returning a person to a country where they may be at risk of persecution. It is a cause for concern that the relevant clause of the Cotonou Agreement commits ACP states to readmit their nationals at the request of EU member states 'and without further formalities'. Such 'formalities' often provide crucial safety nets to protect the rights of those in need of international protection. (McKeever et al. (2005)

¹⁴² Hurwitz, A. (2003)

whether the country to which migrants are being returned is capable or even desirous of providing effective protection¹⁴³ – and yet the need for such procedures is unquestionable when the poor human rights record of some of the countries targeted for such agreements is taken into consideration. Transit flows raise their own set of concerns: transit populations have no political voice in the transit country and are therefore potentially exposed to human rights violations. As the European Commission recognises, international protection is at risk when migration control is delegated to non-democratic governments without adequate technical training and supervision. This in fact is the situation in most countries on the irregular migration routes to Europe.

There are certain cases which may be mentioned where a poor human rights record is the case. For example, whilst ‘deeply regretting’ events in Ceuta and Melilla which led to the shooting of six migrants by Moroccan border guards, the European Commission’s response was to send a team of border control experts, offer Morocco 40 million Euro to protect its borders, and call on Morocco to sign a readmission agreement with the EU by the end of the year. Morocco is further currently reported to have abandoned 500 migrants on its desert border with Algeria and to be negotiating the return of 1,000 migrants to sub-Saharan Africa – a region where conflict, persecution and human rights violations are endemic¹⁴⁴. Under such circumstances it is to be doubted whether Morocco can still be granted, as intended by the European Commission, the status of a ‘safe’ country to which immigrants can be safely sent back.¹⁴⁵

Also ECRE and its members have long been concerned that Italy may be returning to Libya migrants arriving on the island of Lampedusa, without hearing individual asylum claims, fears that were echoed by the European Parliament’s citizen’s rights committee, following a visit by a delegation from the Committee in September. Castles et al. (2005) report that despite considerable concerns about the political and human rights situation in Syria (which is not a signatory of the 1951 Refugee Convention), the EU has negotiated a readmission

¹⁴³ ECRE (2004a, June)

¹⁴⁴ ECRE (2005b)

clause with Syria. The International Federation for Human Rights has also called on the EU to renounce the readmission agreements it has made with third countries such as Morocco, Pakistan and Sri Lanka, in the belief that the human rights of such returnees can be protected¹⁴⁶. Oxfam and Compas both object to the negotiation of a readmission with Sri Lanka¹⁴⁷; and Oxfam expressed concern that, whilst on a visit to China in April 2004, the President of the European Commission said that, due to human-rights concerns, it was improbable that the arms embargo would be lifted in the near future, during the same visit, however, the case for an 'early signing' of the EU-China readmission agreement was urged¹⁴⁸.

Thus, McKeevers et al. (2005) in their report for Oxfam, recommend that although readmission agreements, if properly worded, *could* provide an additional safety net to ensure that nobody is sent from the EU to a country where his or her life or freedom may be in danger, when concluding such agreements, the EU should ensure guarantees are in place that any asylum seekers returned or transferred to the relevant country will be admitted to the receiving state in conditions of safety; will be provided (in the case of transfers to countries of transit) with full access to a fair refugee-status determination procedure, be effectively protected against *refoulement*, and be treated according to international human-rights standards.

If the above is not the case then the very existence of readmission agreements would involve the breaching of EU member states' international obligations. It is true that such guarantees may be of little worth in practice if the third country regularly breaches norms of international human rights and refugee law, which means that it is crucial that such considerations should influence the EU's choice of countries with which to conclude readmission agreements. The Commission also stated that the negotiation of readmission

¹⁴⁵ Also since then, Spain has used a bilateral readmission agreement to return to Morocco some of those who managed to cross into Melilla, without, according to local NGOs, properly considering whether any might have grounds for international protection. ECRE (2005b)

¹⁴⁶ The FIDH-AE calls on the European Union to renounce the conclusion of readmission agreements and to commit its future cooperation to the creation of equitable asylum and immigration policies. Retrieved January 12, 2006 from http://www.fidh.org/article.php3?id_article=787

¹⁴⁷ McKeevers et al. (2005): p 42

¹⁴⁸ McKeevers et al. (2005)

instruments should be preceded by an evaluation of the political and human rights situations in the targeted countries. It is not known whether such evaluations have been carried out; the fact remains as detailed above, that agreements with countries which are known for violating human rights have been carried out, and few provisions are in place to monitor the consequences for returnees¹⁴⁹.

3.10 Difficulties for third countries

The readmission of irregular migrants creates difficulties for countries of origin or transit mostly because they do not have the institutions for effective border control, a functioning visa system, an asylum system set up according to the Geneva Refugee Convention, and institutions for the readmission of third country nationals to their home countries. There thus runs the risk of readmitting migrants and asylum seekers to transit countries that have not yet developed adequate safeguards¹⁵⁰. Although the EU has committed itself to improving such institutions in third countries through for example the AENEAS budget line, the amount of investment required is surely much greater than what is offered by the EU at present.

Another potential consequence of this approach is the probability of political backlash in countries of origin as a result of 'robust' cooperation by their authorities - such actions might encourage populist opposition. Coercing the governments of such countries to police their own population on the migration issue can boost corruption and stimulate political unrest and economic instability, and neither outcome is desirable from the perspective of migration management as they are both likely emigration triggers¹⁵¹.

Further, bilateral readmission agreements have also sometimes resulted in a certain degree of disparity if several countries accept the readmission of people but one country in the region refuses to readmit any category of migrants, with the consequence that the others will be faced with a growing number of foreigners.

¹⁴⁹ Hurwitz, A. (2003)

¹⁵⁰ Lavenex, S., Ucarer, E. M. (2004): p 12

¹⁵¹ Pastore, F (2004)

3.11 Effectiveness

The objective of both exit controls and readmission agreements is to prevent prospective irregular immigrants' departure from (or transit through) another country, and to swiftly remove/repatriate those who attempt to find their way into the EU. Yet Pastore (2004) argues that there is little empirical evidence to support the supposition that repatriation ends the migration cycle, and that in fact, some evidence seems to suggest that those who are returned quickly re-enter the migration stream, thus fuelling further the power and reach of smuggling networks.

Moreover, studies also point to serious reintegration difficulties of forced returnees and the additional burden they create on the socio-economic systems of sending countries. This explains a high 'recidivism' among those returned and the low probability that sending countries will meet their obligations under such agreements¹⁵².

3.12 Positive incentives

With regard to readmission agreements, the Commission noted that their successful conclusion depends on the 'leverage' at the EU's disposal, because in fact these agreements benefit the EU more or less solely. The Commission recognised openly that very little can be offered in return (in the fields of migration and asylum).¹⁵³

The Council of the European Union also acknowledged that it may be difficult for third countries to accept the range of obligations laid down under readmission instruments. It recognised that "Some transit countries show a certain reluctance to deal with irregular migration flows properly due to their interest in not becoming a country of destination. It is necessary therefore, to enter into a dialogue with transit countries in order to support their effort to deal with the problem."¹⁵⁴ In its Green Paper on a Community return policy on illegal residents, the Commission also considered the situation of countries of origin:

¹⁵² Pastore, F. (2004)

¹⁵³ Hurwitz, A. (2003)

“Returning people on a large scale could have a considerable impact on the development of a country and on the willingness of the authorities to co-operate in controlling migration.[...] The EU should therefore consider which forms of support are adequate also in order to ensure that returns are sustainable.”¹⁵⁵

This shows that the EU has taken the impact on third countries into consideration. The Commission proposed the adoption of targeted projects, for example concerning the support of asylum seekers infrastructure, the deployment of liaison officers, and the improvement of border control management, with the inclusion of funding under the AENEAS budget line (nevertheless, as has been observed above, it remains that the amount of money as yet allocated is far dwarfed by that allocated towards policing the EU's own external borders, and it argued to be insufficient).

This position gained support by a recently published report by the British House of Lords stating that the “most effective agreements were those inserted in more complex migration management partnerships, which involved some element of development assistance and of privileged access to the labour market, as opposed to those imposed by diplomatic strength, which tended to remain largely on paper”¹⁵⁶. Thus the problem with negative sanctions/conditionality has been acknowledged, and there is a search for positive leverage mechanisms and incentives – strengthening interest and capacity to cooperate.

Recently the Commission listed compensatory measures repeatedly demanded by third countries: more generous visa policies or increased quotas for migrant workers, closer economic cooperation, trade expansion, additional development assistance, better market access or WTO compatible tariff preferences, and the possibility of creating some level of complementarity with other Community policies¹⁵⁷.

¹⁵⁴ European Commission (2001, November)

¹⁵⁵ COM(2002) 175 final

¹⁵⁶ House of Lords Select Committee on the European Union (2002, November). Geddes (2004) concurs with such a view, “evidence suggests that agreements on migration take time to negotiate and only work if they are part of a broader cooperation agenda that is not narrowly focused on readmission of failed asylum-seekers and irregular immigrants”.

¹⁵⁷ European Commission (2003)

Visa policy is a potentially important policy tool. It has been argued that what countries are featured on the EU's list of visa-exempted nations should not only be based on diplomatic consideration, as it has an important impact on the size of migratory flows¹⁵⁸; and "in the spirit and context of Neighbourhood policy as well as of existing relations with partners of 'special interest', such as Russia, visa facilitation agreements must find their proper place in the European migration management strategy"¹⁵⁹ Further, the experiences of some member states, such as that of Italy with Albania or of Greece with both Albania and Bulgaria, have seemed to suggest that opening up privileged legal migration channels does help to reduce illegal migration¹⁶⁰. Indeed, the Hague Programme called for facilitation of visas to non-EU states prepared to assist the EU on readmission issues¹⁶¹. Pastore (2004) states that such an approach is necessary, and questions how EU visa policy can be made more flexible and cooperation oriented, and what specific mechanisms need to be developed. He concludes that "experimentation is important in this area so that the intrinsic rigidity of the Schengen system can be addressed by making visa regulations part of the Union's negotiating arsenal with third countries, particularly with regard to short-term mobility".

However, Hayes (2004) cautions that, by proposing the idea of 'quotas in return for readmission' (ie, by a state's providing visas for certain migrants in return for guarantees on the swift removal from its territory of unwanted migrants), the EU threatens to develop into the biggest trafficker in human beings of all. And interestingly, in Sweden's comments on the new JHA Work Programme, it is stated that "We must be cautious not to make readmission dependent on promises of visa free travel... Sweden does not see the return issue solely as a problem of non-cooperative third countries but indeed as an issue of

¹⁵⁸ COMMUNICATION TO MEMBERS S75/04 THE 2005-2010 EU AGENDA ON ASYLUM, MIGRATION AND FRONTIERS EPC-King Baudouin Foundation Dialogue In cooperation with the Migration Policy Institute 4 October 2004

¹⁵⁹ Pastore, F. (2004). This will become more realistic once such control tools such as the Visa Information System (VIS) are fully implemented and provide further security guarantees.

¹⁶⁰ However the Albanian case is idiosyncratic so it is not possible to make such a quick generalisation. (In brief: the Italian EU presidency (July-December 2003) pursued labour migration quotas (work permits in return for tougher action on irregular migration) based on its own bilateral agreements with Albania, Tunisia and Libya and argued that these have stemmed the flow of irregular migrants from these countries.) Furthermore, most member states are only interested in the immigration of skilled personnel, a goal which coincides neither with the profile of most irregular migrants to the EU nor the interests of most sending states.

individual asylum seekers lacking identity and travel documents. If we were able to prove to third countries the citizenship of a certain asylum seeker we would not face the difficulties we do today. Thus, more focus has to be put on the problems linked to the growing number of undocumented asylum seekers, we need to find incentives for asylum seekers to show their documents.”¹⁶²

Thus, instead of focusing on positive incentives within for example visa policy to induce the cooperation of third countries in the fulfilment of their obligations under readmission agreements, attention may instead be focused on improving systems of documentation of asylum seekers and other migrants; such a focus has worrying implications when one considers that often, due to the very nature of the situation which they attempt to flee, refugees are often not able to obtain documentation, and frequently are forced to rely upon falsified documents as the only way to make their escape and claim the right of asylum.

3.13 Overview

It has been shown that a major priority of the EU within the ‘external dimension’, and within the context of exporting stricter border controls, is the conclusion of readmission agreements. However the use of such agreements raise fundamental and valid questions as to the protection of human rights of those being returned; the difficulties which such agreements impose on third countries with regard to the lack of institutions necessary to effectively deal migration flows and problems of political backlash; the asymmetrical relationship between negotiating parties and the disturbing tendency towards negative conditionality and contamination of the development agenda; and indeed the effectiveness of the agreements themselves in terms of meeting the aims of migration management. While one potential way of motivating third countries to conclude such agreements which may bring benefit to such countries could be the incentive of visa agreements, this in itself

¹⁶¹ Hayes, B. (2004, November 13)

¹⁶² Sweden on the new JHA work programme – asylum and migration. Retrieved January 12, 2006 from http://europa.eu.int/comm/justice_home/news/consulting_public/tampere_ii/sweden_FA.pdf

raises questions and alone is not an answer to the burdens which readmission agreements bring on both migrants and sending and transit countries.

Recommendations

- *Development co-operation should never be made conditional on co-operation in migration management.*
- *The EU and its member states should not conclude readmission agreements or other migration management agreements with countries which have inadequate asylum systems, which are not signatories to the 1951 Convention, and/or which have poor human rights records.*
- *The EU and its member states should take into account the ability of third countries to provide meaningful guarantees on the treatment of migrants when negotiating readmission agreements with them. It should also take into account the institutional structure such states have in place to deal with migrants being returned and provide investment and capacity building where necessary, with a focus on human rights protection.*
- *States signing readmission agreements, or other bilateral migration management agreements must guarantee to protect and not to refoule people who are transferred to their territory, and in negotiating readmission agreements, the EU and member states should elicit meaningful guarantees from third countries on the treatment of migrants returned there.*
- *The EU should monitor whether such guarantees on the treatment of migrants are put into practice.*
- *The benefits and potential problems and unfairness of issuing visa agreements as positive incentives for signing readmission agreements must be carefully evaluated.*

Chapter 4: Return and Repatriation; Circular Migration

This chapter aims to look at the issue of return, a fundamental facet of EU immigration and asylum policy, also in the context of circular migration, to determine whether there may be benefits drawn from particular return measures which can benefit both EU member states and the countries of origin. Within EU action plans to improve cooperation on expulsion, the EU and most member states have set ambitious expulsion targets¹⁶³. The Hague Programme places a large emphasis on return measures. Connected with the issue of return, is the issue of circular migration and the opening of legal immigration channels, enabling migrants to transfer skills and knowledge which they gain in the host country, to the benefit of the sending country to which they return; further, circular return allows for repeated migration to the host country, whereby new skills and knowledge may be acquired, and earnings transferred as remittances¹⁶⁴, again to the benefit of the sending country. Repatriation may incorporate such approaches, allowing for the utilisation of skills and knowledge, as well as earnings made, to provide for sustainable returns which benefit both the sending country and the receiving country. Coodevelopment initiatives aim to do just this.

4.1 Assisted voluntary return

An IOM study¹⁶⁵ on the return of migrants stated that assisted voluntary return (AVR) is “increasingly seen by most governments [cited in the study] as the preferred return option, proving to be more cost effective, humane, and conducive to good relations among all players, also at other levels such as trade and cultural exchange”, and further that experience has also shown that additional ‘investment’ by returning migrants with reintegration support to countries of origin is “likely to render the return more sustainable with flow-on benefits, such as encouraging other irregular migrants to return home

¹⁶³ Hayes, B. (2004, July)

¹⁶⁴ The benefits which remittances bring to sending countries has been increasingly acknowledged. It is not within the scope of this paper to detail the discussion, but it is generally estimated that (formal) remittances equal if not exceed the amount of development assistance which is provided to developing countries.

voluntarily and incentivising returnees to stay home. This in turn encourages destination countries to expand their approaches and address root causes of irregular migration, working in partnership with countries of origin to find mutually beneficial solutions". Assisted voluntary return programmes may thus comprise an important part of the 'external dimension' of policy on immigration and asylum¹⁶⁶. Ensuring the return and eventually supporting reintegration may be part of economic cooperation agreements between countries of origin and host countries, and can also be applied to support the conclusion of readmission agreements¹⁶⁷.

While in fact opinions are divided on whether the emphasis on encouraging voluntary return has been abandoned within EU policy in favour of forced or compulsory return, the promotion of AVR is included within a list of best practices identified by member states, as well as "return counselling at the earliest opportunity and communicating clearly to the returnees the availability of voluntary return, whilst maintaining the option to enforce their return"¹⁶⁸.

In the last decade, the number of states in Europe implementing assisted voluntary return programmes has increased substantially. In 2004 there were more than 20 AVR programmes operating out of 18 countries in Europe compared with only four programmes ten years previously¹⁶⁹. Despite similarities of experience between states, there is no harmonised EU approach to either involuntary or voluntary return¹⁷⁰, although there are a number of EU instruments related to return, admittedly not legally binding.

¹⁶⁵ IOM (2004, January)

¹⁶⁶ Reintegration support can be further expanded to embrace a more 'roots cause' approach, from the perspective that the most effective way of supporting voluntary repatriation is for the EU to take action to create the conditions in refugees' and asylum seekers' countries of origin that are conducive to sustainable return in safety and dignity - in other words, to address the persecution, conflict and poor governance that cause people to flee their countries.

¹⁶⁷ This is not to say that mandatory return problems may not focus on development aspects - for example, ALNIMA was a project financed by the EU (budgetary line B7/667; project code 2002/HLWG/26) which to assist the return of Albanian and Moroccan former detainees (for light criminal charges only), and of Nigerian victims of trafficking. In spite of some structural institutional obstacles on the Italian side, the preliminary results of the project are encouraging Stocciero, A. (2005, February).

¹⁶⁸ Council of the European Union (2004, November) Conclusions.

¹⁶⁹ IOM (2004, January)

¹⁷⁰ Among the biggest obstacles to a more harmonised approach are the widely varying definitions used by governments in the field of migration. IOM (2004, January)

The EU Return Action Programme, approved by the Council on 28 November 2002, recommends the development of best practices for return to specific countries of origin or transit, the purpose of these best practices being to promote effective practical cooperation among member states on the one hand, and between member states and countries of origin or transit, on the other hand.

The Hague programme called for closer cooperation and the launch of a European Return Fund (referred to in Chapter 2), which would support member states in their removals programmes and other activities related to returning irregular migrants and failed asylum seekers¹⁷¹, and recently the Commission advocated in its 2005 Communication on 'Development and Migration' a return policy for refugees and legal migrants who wish to return to their country of origin, with the view of serving both the immediate and longer interests of both developing countries and the migrants concerned.

The European Return Fund will financially support the implementation of integrated return programmes. These programmes are expected to support the so-called 'sustainability' or durability of returns by providing pre-and post-return assistance to returnees with a view to supporting their reintegration in their country of origin. These actions presuppose the effective cooperation of third countries' authorities in order to "monitor the situation of returnees and the sustainability of their situation after return"¹⁷², underlining closer diplomatic operational and institutional cooperation with third countries¹⁷³.

However, Pastore (2004) makes the criticism that the current debate on repatriation policy is narrowing the EU's focus to purely operational issues (such as joint flights) and financial arrangements (the Return Fund), and that the policy as a whole is losing its strategic

¹⁷¹ Some of the funding for the repatriations will come from the recently established 'European Refugee Fund', which is disappointing when considered that this budget line was created to assist in the 'support and integration' of refugees in the EU.

¹⁷² Cassarino, J. (2005, October)

¹⁷³ Wording regarding the ERF is careful not to use the term 'readmission' – those actions considered in the ERF are "not covered by Community readmission agreements or national bilateral readmission agreements" – but nonetheless do include the "return of third country nationals who are not in the possession of passports or

perspective. He claims that the objective – and challenge – should be to make EU repatriation policy “more cost-effective, smarter, fairer and sustainable”.

4.2 Problems with voluntary returns

Voluntary return programmes focus mainly on individual opportunities. Returnees are generally offered personal compensation of costs to start their life or to start up a business in the country of origin. A general problem in this area is that, despite a vast amount of material available, there remain large gaps in information and a lack of evaluative material to enable full conclusions to be drawn across countries about generic best practices¹⁷⁴.

Stoccio (2005) asserts that “positive returns are an area within which more experiments have been undertaken, and more failures have been experienced” - migration for development projects, and especially those sustaining migrants’ entrepreneurship in their countries of origin, show problems of opportunity costs. Rosemarie Rogers examined the different repatriation support programmes implemented throughout the mid-1990s and drew conclusions about their weaknesses¹⁷⁵. Many of the programmes were primarily concerned with the weakest segment of the migrant population, namely unemployed migrants, victims of trafficking, rejected asylum-seekers, refugees (it is indeed questionable whether such programmes be targeted at this category of vulnerable migrants¹⁷⁶), and former detainees.

The programmes as a rule disallowed the possibility of a reimmigration at a later date for the purpose of gaining employment, and therefore the irreversible nature of the return agreements offered by some countries made them less attractive (and precluded the possibility of benefits to be brought to both sending and receiving countries through circular mobility); and the economic reality for the emigrants returning to their countries of origin was “not exactly auspicious”.

other identity documents [as well as] the return to a particular country of third country nationals and stateless persons”.

¹⁷⁴ IOM Migrant Return

¹⁷⁵ Rogers, R. (1997)

Return programmes can be expensive and difficult to implement, and many have not been particularly successful in encouraging large-scale or sustained return. Moreover, a problem of inequality may be created when migrants receive more incentives than local people, without producing a higher impact on development. Thus we can see that there are problems of efficacy, efficiency and impact, unless clear added values are identified.

4.3 Experience

How the migrants' countries of origin are included in the planning and implementation of these different repatriation programmes is of crucial importance in determining policy aspects of development aid. Experience has shown that strategies of sustainable development can only be formulated by the affected countries themselves. Repatriation support relevant to development policy presupposes that a reconciliation of interests occurs between immigration countries and countries of origin¹⁷⁷.

Certain Council of Europe member states have introduced policies aimed at encouraging the return of immigrants to their country of origin so that they may participate in the economic development of their regions and countries of origin using skills and knowledge acquired during vocational experiences and allowing them to reintegrate into local working life. Niessen (2003) writes that both France and Germany have been at the forefront of developing assistance programmes supporting voluntary return¹⁷⁸. Such policies have been given various names, such as 'return aid', 'reinsertion' or 'codevelopment aid'. In particular, the French strategy of codevelopment has been cited as an example of how to

¹⁷⁶ For example, the premature repatriation of Afghani refugees was much criticised. Daily Times (2002, August 21)

¹⁷⁷ Aumüller, J. (2002)

¹⁷⁸ In France, the Migrations and Economic initiatives Programme, initiated in 2001, is financed by the Ministries of social Affairs and foreign Affairs and run by an NGO. The aim of the programme is to assist both legal and illegal immigrants from Africa wishing to start a business in France or their country of origin and to point them in the right direction for training, technical assistance and funding. Bilateral cooperation between Germany and Turkey is geared primarily to infrastructure development projects, supplemented by advice measures making it easier for Turkish immigrants to invest in, or return to, their home country. Also in an African context, IOM's assisted return programme for Qualified Nations (RQN) was in operation for sixteen years, but has now ended due to lack of support from the EU as primary donor.

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link trade, development and migration¹⁷⁹. In this particular model, stable migrant communities in France are given an official role in helping build up the home country's economy. The policy includes codevelopment agreements with individual countries that provide an official structure to help migrants set up business in Europe and foster trade relations with their countries. For instance, France and Mali signed a convention with the aim of increasing the impact of remittance from Malians working in France.

Such policies have several objectives. For the host country, they are a means of stabilising and managing migratory flows and directing aid towards development by enabling local populations to participate in economic projects; there are also advantages to receiving countries in meeting labour force needs and reducing demographic problems. For the country of origin, they generate wealth and create jobs by strengthening production capabilities, infrastructures and the scope of action of local bodies; they increase access to visas, increase amounts and efficiency of remittances and promote the return and recirculation of skilled and seasonal workers, and of retirees. It is important to stress that the best migration policy for developed nations is one that seeks to smoothly regulate the circulation and recirculation of the majority of immigrants. One of the most important aims is to encourage migrants and their relatives who receive remittances to invest their money into projects that would foster economic development in their country.

It can be seen from Box 2 that a number of initiatives with EU funding are already underway which use as a guide the above principles in return and reintegration of migrants. Such initiatives are a positive step to be expanded upon within the 'external dimension' of EU policy on immigration and asylum, in particular in light of the Commission's 2005 Communication on 'Migration and Development', which explicitly calls for the benefits of remittances to be enhanced, along with considerations of circular migration, efforts to lessen 'brain drain', and to enhance the role of the diaspora.

¹⁷⁹ Weil, P. (2001, May)

Box 2

The 1999 Stability Pact for South Eastern Europe provides a framework to discuss human rights, economic and security issues to support countries in South Eastern Europe in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the region. Following the conflicts in the Balkans, as a contribution to the Stability Pact and an interim step towards membership, the EU concluded Stabilisation and Association Agreements with Albania, Bosnia-Herzegovina, Croatia, FYR Macedonia and Serbia and Montenegro. The intention was to increase economic, political and social co-operation between the EU and the countries concerned through the CARDS programme. It was designed to help with reconstruction, refugee returns, economic development and stability in the region. In Bosnia and Herzegovina, there were still a large number of refugees unable to return to the homes they left during the war. For a returns policy to be effective, new businesses and new jobs have to be created; the Quick Impact Facility (ICF) programme aimed to achieve this. In three years it was able to give support to 85 companies, creating 2,100 new jobs.

- The TACIS (2000-2006) Community programme encourages democratisation, the rule of law, and the transition to a market economy in the New Independent States (NIS). It makes provision for technical and financial assistance, and for example aided the return of some of a huge number of internally displaced persons¹⁸⁰ supported by Azerbaijan. Other programmes assisting in this region were for example a rehabilitation programme (REHAB I) with a total budget of 3 million Euro, and humanitarian assistance from ECHO.
- Under the MEDA programme – the EU's main financing instrument for implementation of the Euro-Mediterranean partnership – there is support for socio-economic development projects in regions of high outmigration, for migration management border control and for the fight against illegal migration. An integrated pilot project is currently under way in Morocco for the local socio-economic development of a region with a high migration potential, co-financed by the EU. Through the MEDA

¹⁸⁰ Although the migrants in question were not true 'immigrants', the approach still has relevance as the overall effect is to aid sustainable return and in so doing prevent unwanted immigration into the EU.

programme, the Commission also addresses other issues, including the fight against organised crime, smuggling of migrants and trafficking of human beings.

- The initiative MARRI (Migration, Asylum, Refugees Regional Initiative) aims to enhance state and human security and initiate, facilitate and co-ordinate developments in the fields of asylum, migration, visa, border management and sustainability of return, and to meet international and European standards. It covers asylum, legal migration, illegal migration, border management, visa and entry policies, and return/resettlement of refugees and displaced persons. The geographical scope of MARRI covers Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Serbia and Montenegro, Bulgaria, Romania and Moldova. The programme highlights that control measures to manage migration should be complemented by alternative channels to promote freedom of movement for the citizens within the region, and eventually within the larger Europe.

4.4 Positive steps

The UNHCR urges that making return sustainable is of critical importance: "Combining return and development projects, facilitating employment on return, and developing partnerships in order to monitor the safety and welfare of returnees – thereby building confidence in the possibility of return – can all contribute to the viability of re-integration."¹⁸¹ If codevelopment policies are implemented, these will significantly improve the regulation of migratory flows in the common interests of the countries of origin, receiving countries and migrants themselves.

It is necessary to put in place institutional activities in order to accompany these projects and help to overcome bureaucratic obstacles that can delay the beginning of the activities¹⁸². In addition, UNHCR urges that refugees and rejected asylum-seekers

¹⁸¹ UNHCR (2005, October 10)

¹⁸² For this purpose, the international network that 'local authorities' can put in place can be very important and serve as a guarantee; institutional support to the project must be efficient and financial incentives rather than gifts and charity should be delivered; local partners should be trustworthy and competent; the knowledge that the migrant has about the local context must be verified and often up-dated; it is better if productive returns are group or community projects rather than designed for single migrants; the groups must be cohesive

returning from the EU be enabled to transfer – or take with them – assets acquired during their stay in Europe, including such acquired rights as contributions to member state pension funds, as this can constitute an important capital for reintegration¹⁸³. Further, sending and receiving countries should ensure that information on return and reintegration is part of the pre-departure orientation package for labour migrants. Such well-managed return leads to the benefit of both sending and receiving countries.

4.5 Circular migration

Programmes which encourage the 'productive' return of migrant workers who are then supposed to magically turn into entrepreneurs and create jobs have been very difficult to carry out in practice. Therefore it is argued that it is better to reduce the barriers to circular mobility of potential transnational entrepreneurs, and reduce barriers to the market and to credit access in a more liberalised context.

Destination countries, therefore, in cooperation with countries of origin, should develop policies that promote the circulation of (skilled) migrants. When migrants return, either permanently or temporarily, or when they set up networks between their home and destination institutions, it is likely that they will foster the transfer of technology and knowledge. All categories of migrants, not just skilled migrants, are able to benefit from circulation. Seasonal migrants could have renewable visas that would allow them to work for a certain period of time several consecutive years in the host country on the condition that they return home after each working season. This would lessen the motivation for illegal migration¹⁸⁴. Retirees could be granted a permanent visa to circulate, guaranteeing them continued access to medical assistance in the host country. This leads us to the second part of this chapter: the opening up of legal migration channels.

and the projects must be innovative and of significant size; accompanying technical assistance should be delivered; and migrants must be the ultimate owners of their projects.

¹⁸³ This may be part of economic cooperation agreements between home and host countries or a separate agreement. If not possible, then migrant on departure from the host country should have access to their social security contributions reimbursed in the form of a lump sum.

4.6 The need to open up legal migration channels

'Pull factors', such as the growing share of 'black labour' in European economies were mentioned in Chapter 2 as having not been given sufficient consideration in policy debate on 'root causes' of migration; in Chapter 2 it was mentioned that one way to motivate third countries to conclude readmission agreements was the opening of privileged legal immigration channels. Therefore we have already touched on the importance of the issue of opening legal migration channels in connection with the 'external dimension' of EU policy on immigration and asylum.

The leading logic is that controlling borders is very difficult in countries where there is a big demand for labour', and that opening up more channels for legal immigration would be a useful tool for solving this problem. The McKeever et al. (2005) state that, with deterrence rather than protection being the priority of most member states, seeking asylum in the EU has become increasingly difficult; it is now almost impossible for asylum seekers to enter Europe legally. It is estimated that 90 % of asylum seekers have to rely on illegal entry methods to enter EU territory. As a result, more and more are forced to rely on smugglers and traffickers – an outcome which the EU has specifically stated that it wishes to avoid. More than 5000 deaths of refugees and migrants caused by these policies have been documented. Thus, the establishment of legal and accessible channels of immigration, although not sufficient on their own, are a necessary precondition for action to discourage trafficking in human beings. Hayes (2004) comments that in order to develop a balanced policy on migration "the EU has to accept that the external aspect of its immigration policy must also address admission of migrants". It is necessary to acknowledge the strong 'pull factors' that operate in bringing migrants to Europe; the demand on the EU labour market for qualified, as well as unqualified labour, should be taken into account and moreover could represent an important contribution to the realisation of the Lisbon Agenda. In addition, so-called regularisation schemes for irregular migrants should be seen as a possible means to improve the individual situation of the irregular migrant and should be considered as a response to the demands of the labour market.

¹⁸⁴ Weil, P. (2001, May)

The UN estimates that a slight relaxation of restrictions on the movement of workers – increasing the proportion of migrants in the workforce of developed countries to 3 % - would deliver global gains of perhaps \$150 billion per year¹⁸⁵. Remittances sent home by international migrants through official channels currently amount to \$93 billion per year, and including through informal transfers this is more likely to be \$300. To put this in proportion, the UN estimates that the Millennium Development Goals could be met if aid were increased to \$100 billion per year. Migration can deliver massive economic gains, which could be used for poverty reduction; however that is not to say that migration's costs and benefits will not be distributed unevenly – many developmental gains are likely to impose costs for some¹⁸⁶.

4.7 'Brain drain'

Migration policy should not however be determined only on the basis of labour market developments as granting work permits only to people with certain specified qualifications contributes to the 'brain drain' from developing countries, and benefits the wealthiest countries.

Some remain pessimistic about the minimising the negative development impact of skilled migration on countries of origin. There have been various debates and proposals in European countries, the EU and OECD about ways of encouraging brain circulation, engaging diaspora in business and development projects with places of origin, and better channelling and use of remittances. It is argued here that there is undeniably scope for this form of 'win-win' approach, but it must be recognised that the settlement of skilled migrants in European countries means a serious net loss for sending countries. Therefore it is vital that the exchange of knowledge and experience should be promoted, and migrants living in the EU should have the opportunity to inform themselves about career possibilities in their country of origin.

¹⁸⁵ House of Commons International Development Committee (2004)

¹⁸⁶ House of Commons International Development Committee (2004): p 24

4.8 Circular migration as an answer?

In this paper the need to find areas where the interests of individual migrants, host societies and home societies coincide has been emphasised. Circular migration provides this possibility, as it allows developed countries to fill temporary job openings, migrants to earn an income and acquire skills, and home countries to welcome skilled individuals on their return.

A legal framework for temporary labour migration is necessary for this to come about. It should open regular ways for migrants, cover common admission procedures and criteria, and deliver a secure legal status¹⁸⁷. The General Agreement on Trade in Services (GATS) negotiations on temporary movement of natural persons were an opportunity to regulate and enhance migration of this kind. At the global level, the GATS Mode 4 includes provisions for the mobility and facilitated circulation of skilled workers to provide services. However, although in the negotiations, the developing countries pushed for the inclusion of Mode 4, but their expectations were not fulfilled, because Western countries' commitments to liberalise covered only selected sectors and in fact placed numerous conditions on the qualifications and the scope of activity of admissible workers and thus GATS applies restrictions to activities in which developing countries are competitive. Developing countries seek to broaden the definitions used under Mode 4, as well as making it less dependent on transnational companies and international recruitment agencies¹⁸⁸.

The desire of Western countries to appear in control of immigration flows, alongside with economic and demographic pressures, may well lead to more temporary work programs in the years ahead¹⁸⁹. To date the problem of 're-entry' has been addressed to an extent with

¹⁸⁷ Quaker Council for European Affairs, International Catholic Migration Commission, et al (2005)

¹⁸⁸ Niessen, J. (2003, February 20)

¹⁸⁹ <http://www.migrationinformation.org/Feature/display.cfm?id=355>. Retrieved January 12, 2006.

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regard to researchers in a recent Commission proposal that raises the possibility of multi-entry visas and re-entry grants upon return to country of origin¹⁹⁰.

However, there is still a striking lack of commitment on the side of the EU to propose or adopt legislation in the area of legal migration, as shall now be illustrated¹⁹¹.

4.9 Legal migration policy in the EU

The Immigration Law Practitioners' Association (ILPA (2004)) claim that there is little political will or even ability among member states develop a coherent and positive strategy for increasing legal labour migration routes into the EU, or to tackle the question of admission of third-country nationals to their labour market in any binding legal agreement. A draft Council Directive on conditions of entry and residence of third-country nationals for the purpose employment and economic activities was abandoned and the European Council, referring to a forthcoming Commission Green Paper on labour migration and best practices in Member States, merely invited the Commission "to present a policy plan on legal migration including admission procedures capable of responding to fluctuating demands for migrant labour in the labour market before the end of 2005"¹⁹².

Liese Prokop, minister of the interior for Austria, when commenting on Austria's upcoming presidency of the European Council, stated that he did "not expect any new initiatives to

¹⁹⁰ Geddes, A. (2004). The 6th Community RTD Framework programme also offers training to scientists from third countries with the aim of increasing the scientific and technological capacity of MENA countries and providing re-entry grants.

¹⁹¹ Geddes, A. (2005)

¹⁹² ILPA (2004). In fact, in a memo from the Commission, it noted that the public consultation on the Green Paper on economic migration had showed a general support for a common EU policy for economic immigration, but with important differences in approach as to the final result; it acknowledged that the document did not contain any legislative or operational approaches, but stated that the Commission will progressively present a set of legislative proposals concerning the conditions of entry and residence for third-country nationals in employment. These proposals will consist of a general framework directive defining the basic rights of all immigrant workers and four specific directives addressing the conditions of entry and residence of certain categories of immigrants (highly skilled and seasonal workers, intra-corporate transferees and remunerated trainees). Monitoring and other possible actions in order to limit the worse effects of brain drain, and instruments to encourage return and circular migration were emphasised. Thus, the Commission displays a certain favourable attitude towards codevelopment and circular migration policies; nevertheless the will of the individual member states does not tend to incline in the same direction. European Commission (2005, December). Memo on policy plan on legal migration. MEMO/05/494.

result from the Action Plan on labour migration; rather, [he] would anticipate that our work will aim to “fill the gaps”¹⁹³, foreseeing is that member states administer, in principle, situations that had already begun in earlier periods, ie immigration for family reunification. With regard to economic migration he admitted that a Europe-wide management approach to these issues, however, is still lacking (although the principle of “one size fits all” would not be appropriate).

Consequently, the ILPA state that ‘the fight against illegal immigration’ is still being conducted without any effort to address lawful admission of third country nationals for employment. The only positive suggestion on legal migration which can be found in the Hague Programme is a reference to the use of Community funds to assist third countries in providing information on legal channels of migration. Legal immigration channels and immigrant integration are still left almost entirely to the Member States, and despite rhetoric to the contrary, the political will to truly have a European immigration policy is still lacking.

4.10 Overview

This chapter has shown that voluntary return measures may be positively implemented with gains for both sending and receiving countries and migrants themselves, through well-worked out codevelopment strategies within repatriation initiatives, allowing migrants to make use of the skills and knowledge which they have acquired, as well as earnings and contributions to social security. The Commission appears to approve of such an approach, in its 2005 Communication, but at present an integrated strategy which links migration and development (M&D) goals with those of ensuring sustainable return with a view to better migration management is lacking. Furthermore, the benefits of circular migration for all parties involved were pointed out, as well as the need for an opening of legal migration channels, but disappointingly the political will to establish a legal framework in promotion of such is lacking.

¹⁹³ Eurasyllum (2005, December)

Recommendations

- *EU leaders and third countries should commit themselves to monitoring and evaluating the impact on returned asylum seekers.*
- *Strategies for sustainable return need to be formulated with the full involvement of the sending countries.*
- *Codevelopment strategies should be pursued within voluntary return initiatives, ideally an integrated and coherent strategy that links European development policy and migration policy should be pursued within the area of return measures.*
- *Refugees and rejected asylum-seekers returning from the EU should be enabled to transfer or take with them any assets acquired during their stay in Europe*
- *Sending and receiving countries should ensure that information on return and reintegration is part of the pre-departure orientation package for labour migrants.*
- *Destination countries, in cooperation with countries of origin, should develop policies that promote the circulation of migrants*
- *Migration policy should not be determined only on the basis of labour market developments in order not to contribute to the 'brain drain'.*
- *A legal framework for temporary labour migration should be aimed at, which opens regular ways for migrants, covers common admission procedures and criteria, and deliver a secure legal status.*

Chapter 5: Protection in the Region of origin

In September 2005 the Commission published its Communication on Regional Protection Programmes. This chapter aims to outline the specific political context in the EU in which proposals for refugees in 'regions of origin' have developed, showing how these proposals have rearticulated initiatives and policies from past decades, and discussing those problems, contradictions and controversies inherent in the proposed strategies, and whether they are able to meet the concerns of third states in addition to serving the interests of EU member states in reducing asylum flows to the EU.

5.1 The concept of 'protection in the region of origin'

Within the process of EU policy making on migration management, a particular cluster of proposals and discussions crystallised around the concept of 'protection in the region of origin'. A debate was started by Jack Straw (UK foreign office minister), who argued that all refugees want is to return home safely. The Commission's 2004 Communication on asylum, 'Improving access to durable solutions'¹⁹⁴, was based on British 'New' Labour's "new vision for refugees"¹⁹⁵. Inspired by the Australian government's "Pacific Solution" for refugees, the Blair government had proposed the "external processing" of all asylum claims and "protection in the region" for the vast majority of the world's refugees through the creation or expansion of refugee camps in eastern Europe, Africa, Turkey and the Middle East. The proposals were vociferously condemned by refugee legal groups and human rights organisations as being incompatible with the Geneva Refugee Convention and the fundamental right to seek asylum in the EU, since the principal aim of the proposal was the transfer of asylum seekers who had arrived in countries supporting the scheme, without even first having their claims processed, to one of the areas in the corresponding region¹⁹⁶.

¹⁹⁴ European Commission (2004, June)

¹⁹⁵ Hayes, B. (2004, July)

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Following new Labour's "new vision for refugees", the Commission had proposed "protection in the region", another principle endorsed by a UNHCR-driven process which led in 2002 to the adoption of an 'Agenda for Protection', endorsed by the member states of the UNHCR. This was based on the controversial argument cited in the introduction: that there is no need for refugees from the third world to come to Europe when they could just as easily seek protection in neighbouring countries or elsewhere in the region. Both processes addressed a common set of concerns including 1) 'hybrid' or mixed flows of asylum seekers and economic migrants, and the apparent abuse of asylum procedures by trafficking agents, 2) the 'secondary movement' of asylum seekers from 'safe countries of first asylum', and 3) the lack of burden-sharing, whereby poorer countries host the majority of the world's refugees but receive only a minor proportion of the funds for refugee assistance available worldwide.

Former High Commissioner Ruud Lubbers presented the UNHCR's proposal 'Convention Plus' at an informal JHA Council meeting in Copenhagen in 2002, but no concrete initiatives were agreed upon¹⁹⁷. The UK government took over the initiative and in March 2003 gave its own proposal at an informal JHA Council meeting: "New International Approaches to Asylum Processing and Protection" – which restated proposals for regional management of migration flows, and also proposed the idea of 'protected areas' in the regions of origin, as well as 'transit processing centres' *en route* to the EU, 'to which those arriving in EU member states and claiming asylum could be transferred to have their claims processed'¹⁹⁸. The UK proposal should be seen against the background of record high numbers of asylum seekers to the UK in 2002, and domestic political rhetoric against irregular immigration.

The UK proposal however did not survive the Thessaloniki Council meeting in 2003. Whilst Austria, Holland and Denmark, who all had influential anti-migration parties in the national parliaments, supported the proposal, other member states were sceptical – Sweden

¹⁹⁷ Peral, L. (2005, May)

¹⁹⁸ The Danish Government unilaterally decided to set up funds for a Danish *noeromradestrategi* (including support to the UNHCR initiatives in this regard).

was strongly opposed, and in Germany media comparisons were made of the proposed Transit Processing Centres with concentration camps.

The UK Home Office had suggested that successful development policies would mean that in future there would be "no need to flee", but the Commission's 2004 Communication appeared to have concluded that in the without such a credible development policy, this argument did not hold. Therefore instead it proposed financial and managerial assistance to states in refugees' regions of origin to help them become "robust providers of effective protection". What this means is funding immigration controls and asylum systems in third countries on the basis of EU minimum standards¹⁹⁹.

The Commission's June 2004 Communication on improving access to durable solutions proposed 'EU Regional Protection Programmes': a 'tool box' of actions and projects on asylum and migration to be initiated with regard to a specific region/country, and to be "drawn up in partnership with the countries concerned". These would also be formulated in conjunction with the Regional and Country Strategy Papers (R/CSPs), drawn up by the Commission's Development and External Relations Directorates, and as such would form part of the EU's overall strategy concerning the region or country in question: "an integrated and comprehensive EU approach to asylum and migration".²⁰⁰

The Hague Programme, agreed in November 2004, supported the June 2004 Communication and identified RPPs as a core element of the EU's partnerships with countries and regions of origin. Following the issue of the Commission's Communication

¹⁹⁹ It was proposed that these centres "could be managed by the International Organisation for Migration (IOM) with a screening system approved by the UNHCR".

²⁰⁰ A country will then be seen to offer "effective protection" for refugees, and safe for return, if it meets five "benchmarks":

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) the principle of non-refoulement in accordance with the Geneva Convention is respected;
- (c) the right to freedom from torture and cruel, inhuman or degrading treatment is respected as well as the prohibition of removal to such treatment;
- (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention;
- (e) the possibility exists to live a safe and dignified life taking into consideration the relevant socio-economic conditions prevailing in the host country. Hayes, B. (2004, July)

on Regional Protection Programmes (2005)²⁰¹ the Commission provided further detail in December, and the formal launch of individual projects is expected in Autumn 2006.²⁰²

5.2 The proposed Regional Protection Programmes

Together with repatriation and resettlement schemes, the strategy attempts to stabilise refugee populations and their host communities and increase their participation in, and contribution to development at local and national levels, so as to improve the possibility of reaching durable solutions, whether through repatriation or through local integration. This was affirmed in the 2005 Communication on Regional Protection Programmes, which recalled the Council Conclusions of Thessaloniki of 2003 June.

In 2003 UNHCR identified 38 refugee situations which could be considered protracted, in each case where 25,000 or more refugees had been living in exile for more than five years, as well as other situations where RPPs could be of benefit. However, for the purposes of pilot RPPs, the Commission considered it important to focus on a clearly delimited area, building on already existing experience²⁰³. According to its Communication on Regional Protection Programmes of 2005, the Commission envisages first a pilot RPP in a region of transit in the Western Newly Independent States (Ukraine/Moldova/Belarus), for the reason that these states emerged as a clear priority in discussions with member states and they already constitute a strong priority across community external relations policy and financial assistance. Action will be focused on strengthening already existing protection capacity.

The Commission also considered the prospect of taking further action regarding refugees from the Great Lakes region – stating that the opportunity could correspond to the programming of available financial instruments; the centrality of resettlement as a possible durable solution and the political priorities expressed by member states. Proposals for

²⁰⁰ McKeever et al. (2005)

²⁰¹ European Commission (2005b, September)

²⁰² Eurasyum (2006, January)

²⁰³ recognising that while transit regions and regions of origin are different in nature and require different approaches, important for EU to address both types.

activities in these areas will be brought forward in the AENEAS Call for Proposals 2005 and TACIS 2006 Region Action Programmes and other available financial opportunities. Existing structures should be modified to support the additionality offered by the pilot RPPs. As it is difficult to see how a RPP with the limited funds available under AENEAS would have any lasting impact, the Commission therefore considered it necessary to select a focus for the pilot RPP that builds on work already on hand, and cited Tanzania as representing such a geographic locus with large numbers of refugees from Burundi and Democratic Republic of Congo. The Country Strategy Paper and National Indicative Programme (CSP) for the period 2001-2007 between Tanzania and the Community recognises that Tanzania hosts the largest refugee population in Africa. The Commission envisages embarking on dialogue with Tanzanian authorities to discuss the opportunities for and appropriateness of RPP there.²⁰⁴

According to the above-mentioned 2005 Communication, a programme of 5 or 6 actions could be carried out for each of these two pilot programmes, which would include registration and other projects which are focused on the delivery of practical benefits (training, infrastructure building, the provision of equipment etc). The identification of the specific actions needed for each of the regions identified will be undertaken on the basis of an analysis of on-going activities, and in close cooperation with the national authorities of the third countries concerned and UNHCR.

Other possibilities to be explored are North Africa, the Afghanistan region and the Horn of Africa. North Africa is a particular focus for 'migration management' co-operation initiatives, because many asylum seekers have to travel through countries such as Libya, Tunisia, and Morocco in order to reach Europe²⁰⁵. The Commission foresees an

²⁰⁴ The indicative budget for action towards durable solutions for refugees in sub Saharan Africa for 2005 is 4 million Euro. A further 5 million Euro is indicated for actions linked to migration management. The European Council Conclusions of 15/16 December 2005 state that it aims to "establish and implement a pilot Regional Protection Programme (RPP) involving Tanzania as early as possible in 2006, with a steering group to oversee the programme[...and...] Based on findings from the pilot, develop plans for further programmes in Africa."

²⁰⁵ McKeever et al. (2005)

independent, external evaluation to be carried out by 2007 which will mainly focus on the effects and results of the programmes.

5.3 Reinvention of older strategies

The new policies reinvent strategies and policy instruments which have been around for several decades. A profound refugee crisis in Indochina created the conditions for some of the concepts and approaches which came to dominate refugee policy in the 1990s, such as 'burden-sharing', 'transit camps', and 'country of first asylum'. Refugee policy in the 1990s turned towards 'an internationalisation of the refugee crisis' by aiming to push the crisis back across the borders through a number of instruments and programmes, for example support for repatriation, conflict resolution and conflict prevention, by attempts to create safe or protected zones within areas of conflict; and also by a progressive institutionalisation of the protection of 'Internally Displaced Populations' (IDPs). Instruments such as these are still part of what is called the 'tool box' of international community, but some have proven weaker – for example the Srebrenica massacre destroyed confidence in the creation and enforcement of safe, humanitarian zones in conflict areas; the IDP regime proved much weaker in practice than the refugee regime; and even the strong push for repatriation was much criticised after large-scale but seemingly premature 'facilitated' repatriation operations in Afghanistan in 2002. Thus, an important question for the 'refugees in the region of origin' strategy remains concerning what possibilities there are for improving protection and the development of refugees in the neighbouring countries to a conflict.

5.4 Current projects and practice

The UNHCR has been pursuing generic multilateral agreements to tackle the "more effective targeting of development assistance to support durable solutions for refugees, whether in countries of asylum or upon return home", which is one of its three priority challenges. Denmark and Japan are the two countries which were given a lead role in creating the UNHCR's special agreement on development aid.

Box 3

In May 2003 Denmark adopted a strategy for actions in refugees' regions of origin. It aims to promote durable solutions for refugees by integrating refugees in development programmes through a combination of multilateral and bilateral activities in close cooperation with the governments of the host countries. The strategy is also an element of the Danish government's ongoing efforts to support conflict prevention.

In the multilateral field, the strategy emphasises strengthening the link between humanitarian and development agencies within the United Nations family, for example, through the 4Rs approach (repatriation, reintegration, rehabilitation and reconstruction) in post-conflict situations with returnees, and by increasing self-reliance (DAR) for refugees in protracted refugee situations pending durable solutions. In the bilateral field, activities will build on existing development programmes and will, in accordance with Denmark's general poverty reduction focus, target refugee-hosting areas, which tend to be the poorest border areas of the concerned developing countries. While the Danish embassies will be responsible for the bilateral activities, a high degree of local ownership will be encouraged.

In the 2003 budget of the Danish Foreign Ministry a new multi-annual budget line was established to support these activities - the government declared that it would spend 100 million DKK on migration related projects in areas bordering conflict zones²⁰⁶. The budget line draws on development assistance funds separate from the continuing humanitarian budget lines. The first allocation for the 3-year period from 2003 to 2005 focuses on Zambia, the United Republic of Tanzania, Somalia and Sri Lanka. In addition, the Dutch parliament has designated an extra 5 million Euro to UNHCR in protection projects in Ghana, Kenya, Tanzania and Yemen.

This new regional strategy aims at assisting people as close to their homes as possible in the case of war or natural disasters. The main idea is described as "improving people's living conditions in order to alleviate hardship but also in order to convince them that they

²⁰⁶ BOND (2003, May)

have a future in the region". The preliminary experiences indicate that there are considerable advantages in human terms as well as clear cost benefits to providing assistance to refugees in their regions of origin. Cost is a significant driving factor – if this can be seen when contrasting the \$1 billion dollars UNHCR spent on caring for 20 million people of concern in 2002, with \$1.4 billion dollars which the Dutch government spent on 81,000 asylum seekers in same year.²⁰⁷ It can be seen that with such a strategy, it is possible for benefits to accrue not only to the refugees, but also to countries of origin, and host countries. *(Gathered from: UNHCR (2004). Convention Plus: Targeting development assistance to achieve durable solutions for refugees. A discussion paper prepared by Denmark and Japan. FORUM/2004/3.)*

Other states' work building upon bilateral initiatives have developed in the context of the European debate on protection in regions of origin. An agreement between Italy and Libya is an example of this (in 2004 negotiations began between Libya and Italy about migration control, including the possibility of setting up processing camps in Libya)²⁰⁸, as well as similar German proposals for Tunisia, and attempts by the UK government to establish migration partnerships²⁰⁹.

The EU, along with the UK, the Netherlands and Denmark has already two current pilot projects co-sponsored by the European Commission, the Netherlands, Denmark and the UK to be carried out by UNHCR: firstly, they have provided over 800,000 Euro to support a preparatory project for the Somali Comprehensive Plan of Action (CPA), based on a gaps analysis and national consultations in Djibouti, Kenya, Somalia, Yemen, and Ethiopia. Secondly, they have provided a similar amount to support the Strengthening Protection Capacity Project (SPCP) in Benin, Burkina Faso, Kenya, and Tanzania. The project, which began in August 2004, is being implemented by UNHCR. It seeks first to identify existing protection gaps in these countries, then to propose measures to address these gaps, and then to implement them, once support has been secured.

²⁰⁷ Schuster, L. (2005, October) Dutch rep; Noll (2003) disputes the anticipated savings.

²⁰⁸ McKeever et al. (2005): Chapter 6

²⁰⁹ The UK had decided to pursue its ideas on a bilateral basis with some other interested states, including Tanzania and South Africa. These negotiations were conducted at a highly confidential diplomatic level, and although it was reported that Tanzania had rejected the UK proposals.

At the same time, the EU has funded a project for institution building for asylum in five North African countries: Algeria, Libya, Mauritania, Morocco, and Tunisia, and the Commission and the Dutch government are financing 5 UN pilot projects in those countries²¹⁰. Initial reports suggested that these projects aimed to establish reception centres in those countries, which prompted concerns that this could be a first step towards establishing external processing there. UNHCR has strongly rejected such claims, however, and has clarified that the projects seek to build or strengthen asylum systems in these countries: "promoting legislation, training of officials in refugee status determination, assisting NGOs in building their capacities, etc. Reception centres do not feature at all in this project." The Italian and German bilateral proposals, however, raise fears that efforts to strengthen (very underdeveloped) asylum systems in North Africa may in future be invoked by EU policy makers in order to justify a move towards 'processing in the regions'²¹¹. Reasons for such fears will be discussed below in more detail.

5.5 Potential benefits of the RPPs

The proposals for RPPs have been met with a conditional welcome from NGOs and international organisations working in the field, as a step in the right direction and worthy of support. "Helping to increase access to protection beyond the boundaries of the EU would help to enlarge the asylum space and clearly contribute to the successful implementation of member states' national and collective development cooperation policies and programmes... The proposed EU Regional Protection Programmes have the potential to greatly enhance the situation of refugees in regions of origin, such as those languishing in refugee camps for many years"²¹².

The positive elements to the new approaches are various - for example, the 'protection in the regions' debate may offer prospects for the development of an EU Resettlement Programme and comprehensive engagement in regions of origin. There is a need to see the

²¹⁰ McKeever et al. (2005)

²¹¹ McKeever et al. (2005)

²¹² ECRE (2004b, June); see also Amnesty International (2004, June)

debate in ways that go beyond a Euro-centric perspective²¹³. The Commission stated that it hopes that this initiative, even if limited in scale, should also push refugee and protection issues up the political agenda to the advantage of refugees, the third countries involved and EU member states²¹⁴. Peral, (2005) argues that the new European trend could be a worldwide opportunity to respond to the *refugee problem* – “since it is aimed at strengthening the traditional ‘exilic’ bias of International Refugee Law – rather than at addressing the *problem of refugees*, which is linked to the so-called root causes of mass displacement”. In this sense, it is an opportunity to revitalise IRL, after what he describes as “fifteen years of constant erosion”.²¹⁵

ECRE (2005) states that the Commission’s list of core activities (in its 2005 Communication on Regional Protection Programmes) is much needed in the countries envisaged by the Commission, such as Ukraine, Moldova, Belarus and Tanzania. While the numbers of asylum applications in Europe have steadily fallen in recent years, this has not meant a reduction of the numbers of refugees at a global level - the vast majority of refugees remain in their regions of origin in extreme poverty and often dangerous circumstances.

The proposals are presented both as a means of solidarity with the poor countries of first asylum that host more than 70 % of the world’s refugees²¹⁶, and also as a means of migration management, reducing the numbers of secondary movements to the EU and creating conditions for the return of asylum seekers from Europe. Thus a huge positive advantage is that the proposals meet both the needs of EU member states, and the interests of those third countries concerned by the plans.

However, there is an underlying question about how to assign responsibilities in terms of providing protection to a large number of people, while at the same time not reducing protection standards²¹⁷; this has no easy answer, and certain concerns have been raised.

²¹³ Schuster, L. (2005, October)

²¹⁴ Commission (2005b)

²¹⁵ Peral, L. (2005, May): p 19

²¹⁶ McKeever et al. (2005)

²¹⁷ Peral (2005)

5.6 Concerns

Although the proposed pilot RPPs and other examples of similar action mentioned above are illustrative of the targeting of development assistance, it should be noted that each is at a relatively early stage of development and that there have been few independent evaluations of their success in reducing forced migration. Castles et al. (2005) caution that the ideas are as yet only vaguely developed, and there are some reservations about the direction in which they may proceed. In particular they cite ideas for assistance to improve local infrastructure in refugee-hosting areas, for assistance for the local integration of refugees, and on return, as being only weakly sketched. It is also true that often attempts to coordinate between the different agencies involved in relief and development activities are more easy to describe on paper than to practically implement.

5.6.1 Reduction of the numbers of migrants to the EU?

While the RPPs represent some prospects of and instruments for improving conditions in refugee hosting areas, it remains an open question whether such improvements will reduce the likelihood of refugees' moving on towards Europe. The argument for the programmes is that improvements in the region, together with resettlement schemes, will reduce the need of poor refugees to become subject to traffickers and embark on dangerous and costly voyages towards the EU. From the perspective of European migration policy, this is one of the main arguments for the strategy of 'protection in the region'.

But Stepputat (2004) cautions that we do not know enough about these dynamics, that there is not enough precise data on the social distribution of asylum seekers in the regions of origin and in Europe, so that the claim "that only richer refugees go to Europe, while poorer stay put remains a qualified guess". He asserts further that it is not proven that improved conditions in the refugee regions of origin will reduce secondary and irregular migration²¹⁸. Boswell and Crisp (2004) reiterates this concern, stating that the disparity in living conditions is likely to be maintained or deepened in the future and if it is true that most

²¹⁸ Stepputat, F. (2004): p 136

asylum seekers in the EU are economic migrants, improved conditions for the refugees are not likely to reduce the number of asylum seekers in the EU. In addition, refugee groups are linked through diasporic and transnational networks to richer countries which provide them the means to move towards Europe, and in fact, involvement in these networks tends to undermine the whole distinction between proximity and distance which is assumed in the 'region of origin strategy', according to which proximity to 'home' should increase the likelihood of repatriation, because refugees remain 'closer' in terms of culture and information.

5.6.2 Dangers of external processing and policy creep

EU policy makers frequently emphasise the need to address the 'secondary movements' of people to Europe²¹⁹. Limiting such secondary movements by creating conditions where refugees will stay contained in the first country that they reach is a way which EU policy makers see as 'managing migration' to the EU. One side of the debate has concentrated on ways for EU member states to process asylum applications outside the European Union, so that a large part – if not all – of the domestic asylum system is exported overseas. Discussions on such 'extra-territorial processing' have explored ways of transferring *en masse* those who do manage to reach the EU to processing centres in their regions of origin. In this way, some member states have come to see 'processing in the region' and 'protection in the region' as two sides of the same 'migration management' coin.

One example was the UK's proposal for Transit Processing Centres in 2003, mentioned above. This idea was at the time discredited on grounds of legality, morality, and practicality²²⁰, as it threatened to shift the responsibility for asylum processing to poorer countries outside the EU which cannot guarantee refugee protection²²¹. However, this same

²¹⁹ Given the range of immigration controls discussed in the first chapter, secondary movements to the EU tend to be 'irregular' and 'unmanaged' – that is, people enter EU territory without express legal permission, often by way of people smugglers and traffickers.

²²⁰ McKeeven et al (2005)

²²¹ Some of the countries suggested for hosting TPCs under the plan were Albania, Croatia, Iran, Morocco, Romania, Russia, northern Somalia, Turkey, and Ukraine. Almost all of these countries have records of violating the rights of asylum seekers, refugees, and migrants. The proposed shifting of the burden of caring for Europe's refugees on to poor countries which could not guarantee their safety gave rise to opposition from many, including the European Parliament.

idea reemerged in the second phase of harmonisation and also proposals by Italy and Germany to establish centres in Libya and Tunisia respectively.

On one hand, it is possible to argue that the RRP projects are conceptually and legally very different from the camps which were proposed by the UK and are instead about capacity building and increasing protection in the region, but on the other hand all are linked politically, since they are about keeping people as close as possible to their country of origin (ie the site of the conflict). Schuster (2005) has commented that they seem to be less about protecting vulnerable people than ensuring that people can be legitimately returned to regions of origin.

Even though both the Commission and the UNHCR have worked hard to stress that the RPP projects aim to build and strengthen asylum systems in the region, and not to create reception centres²²², to some it seems either inevitable, or at least likely, that they will be linked practically in the future. Confusion arises because these same countries have been proposed as sites for the transit centres, and further because they are part of the same logic, in that the existence of asylum systems will mean that such countries may be designated 'safe third countries' and any asylum seekers entering Europe after transiting through them be returned directly to them²²³. It is suggested that much of such engagement 'in the region' is simply about securitisation and containment, and legitimating that agenda. An absence of North-South dialogue has been noted²²⁴.

The worry is that strategies on transferring asylum responsibility may 'creep' into policy. Schuster states that, although it may take years for the policies relating to containment in

²²² (UNHCR 2004b). See also interview with MP Tony McNulty Eurasyllum (Eurasyllum (2006)) on key outcomes of the UK Presidency of the EU in the field of immigration and asylum.: "I would like to underline that this initiative has nothing to do with keeping refugees in transit camps, and RPPs will not deal with the processing of asylum applications outside the EU; It should also be stressed that RPPs aim to increase protection in the regions of origin and that such an approach will be complementary to, and in no way substituting, the Common European Asylum System. [...] It is true, however, that RPPs will also contribute to preventing illegal secondary movements, and to the fight against human trafficking, given that refugee camps are often reservoirs for criminal organisation. But it should be stressed, once again, that the main focus of RPPs is on protection."

²²⁴ Schuster, L. (2005, October)

the region to become institutionalised within the EU or internationally, they may take shape and be implemented in a piecemeal fashion that lacks coherence, cooperation and courage. "When 'vision' is rejected, it is not always dumped" – instead pilot or exploratory projects are launched, and some years later what had previously been rejected may become well-established. Such initiatives happening outside of the normal policy framework are moreover difficult to reverse."

5.6.3 Limited financing

ECRE (2005b) has commented that the proposed actions to create conditions in countries of origin conducive to durable solutions may not have a demonstrable impact in the short time scale and with the limited funds envisaged. The Commission has proposed that the RPPS will be identified and rooted in already existing actions, in the AENEAS and TACIS financial programmes, or through regional cooperation programmes, such as those for the Mediterranean, the Balkans, Eastern Europe, Asia and Latin America, and for Africa through the European Development Fund, and not based on a new financing framework.²²⁵ However it has been noted that the money UNHCR is receiving from AENEAS is a "drop in the ocean" and is far outweighed by funds being poured into managing and/or controlling migration²²⁶. It has further been pointed out that IOM was spending \$4 million dollars to build 2 detention centres in the Ukraine, significantly more than UNHCR was receiving for its projects in conjunction with the EU²²⁷. In contrast, as part of MEDA1, 60 million Euro has been provided for "training border guards" in Morocco and for the removal of Nigerians. Also AENEAS switched from issue-areas to geographical funding in its next call for projects, which may have implications for the sustainability of the RPPs, perhaps leading to conflict between Justice and Home Affairs and Development.

UNHCR has stated that it hopes that any future RPPs, which would fall under the next Financial Perspective and its budget for assistance to third countries in the asylum area, will be supported by "a larger financial envelope". It notes that the scope for coordinating

²²⁵ Castles et al. (2005)

²²⁶ Schu: ter. L. (2005)

²²⁷ IOM has agreed a 4 million Euro project to build 2 detention centres in Northern Ukraine with EU funding. However, it was suspended because of the precarious Ukrainian political situation.

available financial resources with budget lines and programmes in other areas of EU assistance could be explored further, but should not however be at the expense of ongoing and new development and humanitarian activities in key areas of need²²⁸. Finally, ECRE cautions that expectations must be limited for the RPPs given the modest funding allocated to the pilot programmes and the short timescales envisaged.

However, if the EU is serious in its goals of providing real relief to protracted refugee situations, enormous investment over many years will be required to make any significant difference to these situations. Improving protection in the regions can only be achieved through long-term, well-resourced projects, implemented with the full co-operation and commitment of the countries in question and full involvement of those concerned, including refugees themselves. It is questionable whether such commitment will be forthcoming, or whether the RPPs are simply a 'quick-fix' solution.

5.6.4 Sticks and carrots

The cooperation of third states in Regional Protection Programmes will be solicited during reviews of the EU's 'regional and country strategy papers', which cover relations with developing countries in all policy areas. In this way, it can be said that the 'sticks and carrots' of aid and trade may be used to impose the EU's policy agenda on third states²²⁹. Peral (2005) writes that the Commission seems determined to link external financial cooperation with the easing of migratory pressures, "an intention that may lead to a redistribution of development funds according to spurious aims and to specific constraints in international cooperation." According to this perspective, the new form of positive conditionality may entail a diversion of funds that are and should be allocated in relation to the goal of fighting poverty. This is objectionable because rewarding funds to a third state should be ruled out if it is done simply because the country accepts (or the aim is that it accept) a higher number of refugees. This form of conditionality is not consistent either with the EU's expressed commitment to MDGs or with the true objectives of EU development cooperation policy.

²²⁸ UNHCR (2005, October 10a)

²²⁹ Pastore, F. (2005)

ECRE and Amnesty also expressed concerns on the issue of shifting responsibilities for providing effective protection from Europe to areas that are less well equipped to provide it, and the related temptation for EU states to link development aid to developing countries' cooperation in managing migration: "There should be better targeting of development assistance provided that it is aimed at reducing poverty, improving protection and benefiting host communities as much as refugees...such aid should not be tied to cooperation on border controls, as this is likely to result in burden shifting"²³⁰.

5.6.5 Securitisation vs reintegration

Containment in camps and designated areas (as espoused by those promoting securitisation agendas) makes it difficult for refugees to develop mobile livelihood strategies, which otherwise help them. Hence it may be argued that the most effective instrument which should be aimed at for achieving the self-reliance of refugees as well as the development of refugee-hosting areas is the negotiation with host governments on the rights of refugees to move freely within the territory and to have proper documentation.

While conditions in camps and settlements can be improved within the context of RRP, 'local integration' can be pursued as an option in many cases where repatriation is not possible. Contrary to many policy makers' beliefs, this 'durable solution' does not seem to discourage voluntary repatriation. Indeed, it can be a better way of preparing refugees for return to their country of origin – if, they ultimately do return – than 'warehousing' them in camps where they may be de-skilled and at risk. Prospects for local integration are similar to those discussed in the chapter on return and circular migration (Chapter 4), and include income-generating programmes, micro-credit schemes, education and skills training, as well as an emphasis on remittances. However, a lot depends on the willingness, and ability, of the host government to grant refugees legal status, residence and so on, and whether there exists in the area potential for economic development. Often such governments are not able to secure the same for their own citizens. Thus, such 'integration' strategies require much investment.

²³⁰ ECRE (2004b): p 10

A further concern is that Southern states are adopting the language and approach of European states, which is translating into exclusion. For example there was the case of the Tanzanian Government, following the approach of the British Government relating to 'regional protection zones', proposing 'safe havens' in Burundi²³¹.

5.6.6 Evaluation

There have been few independent evaluations of their success in reducing forced migration. With respect to supposed 'successes', the 'Zambia Initiative'²³² was declared a 'success' by UNHCR but there was no evaluation by the Evaluation and Policy Analysis Unit²³³. It has been recommended that evaluation should take place after a reasonable period has passed for implementation of the pilots, allowing for changing conditions on the ground, and for the emergence and systematic examination of results. However, capacity-building measures are difficult to evaluate in quantitative terms and it is particularly difficult to judge the impact of training measures or public awareness activities on the well-being of refugees and asylum-seekers. In a short space of time, qualitative assessment is likely to be the best measurement of progress, as quantitative assessments, based on statistics for durable solutions achieved, or numbers of beneficiaries of protection, may prove difficult to link directly to the activities of the RPP²³⁴. Nevertheless, evaluation of the projects is essential to determine not just their effectiveness in reducing migration pressures from transit countries but in terms of assessing their impact on the protection of refugees and improvement of conditions in the region of origin.

5.6.7 Partnership and burden-sharing?

The concept of RPPs will also be important as part of the EU's stated key approach of working in partnership with source and transit regions of migration to improve migratory flows, which is in the interests of all countries concerned as well as migrants themselves²³⁵.

²³¹ Schuster, L. (2005)

²³² An effort by the Zambian Government and the UNHCR to integrate long-staying Angolan refugees in Zambia's Western Province.

²³³ Schuster, L. (2005)

²³⁴ UNHCR (2005b)

²³⁵ Eurasyllum (2006)

The resettlement component of RPPs is vital in order for the programmes not to be seen as exercises in burden-shifting, rather than responsibility sharing. Further, as an alternative to the proposed forms of extra-territorial processing, Noll suggests that the EU develops and harmonises 'Protected Entry Procedures'²³⁶. Both 'tools' shall now be considered.

5.7 Resettlement

5.7.1 Importance of resettlement programmes

Resettlement is an important component of the global refugee-protection regime, because it offers protection and a durable solution for individuals in need. ECRE states that they create "the opportunity to provide protection, especially to those most in need; it can provide access to Europe for refugees who would otherwise languish in camps for many years, it provides the opportunity to develop coordinated, high-quality reception and integration programmes, and it is an important means of facilitating public understanding of all refugees, their plight and the situations they flee". As well as being one of the three possible traditional durable solutions, alongside voluntary return and local integration, resettlement also serves as a tangible demonstration of international solidarity and burden-sharing with countries in refugees' regions of origin that are themselves often poor and unstable²³⁷; as such it is an important part of the partnership element of RPPs²³⁸.

5.7.2 Current practice

Resettlement involves selecting refugees who have continuing needs for protection in their country of first asylum (usually a country in their region of origin) and transferring them to a third country which has agreed to grant them permanent residence status. Those countries which operate resettlement schemes select refugees for resettlement according to varying criteria. Cases are often identified by UNHCR, and other international organisations and NGOs are involved in selection and processing. The USA is one country which operates a resettlement scheme which it carries out resettlement through the Joint Voluntary Agency

²³⁶ Noll, G. (2003, October). The Multi-dimensional Value of Protected Entry Procedures. Presentation in Records of the International Seminar: Towards more orderly and managed entry in the EU of persons in need of international protection, Rome October 13-14 2003.

²³⁷ ECRE (2005, April)

(JVA). It has been suggested that a similar system could usefully be applied if the EU began operating resettlement schemes on a larger scale²³⁹.

Resettlement to Europe is not however a new phenomenon. 16 countries worldwide undertake the resettlement of refugees²⁴⁰; 55,600 refugees were resettled in 2003 around the world,¹ and in 2004 nearly 100,000 places were made available.² The numbers of refugees resettled to the EU remains small, however: only seven of these 16 countries are European. While the USA resettles on average 80,000–120,000 refugees each year, the combined number for EU member states is around 4000–5000 refugees per year. At a recent meeting in Brussels of policy-makers and NGOs it was stressed that it is not possible to expect countries in the region to take people back, unless EU member states agreed resettlement quotas. To date, the numbers envisaged are minimal, and yet quotas are not being filled²⁴¹.

5.7.3 An EU resettlement scheme

A Council conclusion on durable solutions recommended the creation of an EU resettlement programme. An EU resettlement scheme would be a positive development; if carried out on a significant and strategic scale, it could help to resolve protracted refugee situations. In the longer term, the targeted use of resettlement could increase the protection capacity of countries in regions of origin. According to some proposals, there would be a general EU procedural framework, which would serve as the basis for situation-specific schemes targeting particular refugee caseloads. UNHCR would play a role in selecting and referring refugees for resettlement.

It is proposed that those eligible for resettlement would include both 'Convention refugees' and those who fall outside the 1951 Convention but are found to be in need of 'subsidiary protection status'. The EU would take some responsibility for vulnerable groups of refugees, and those facing integration difficulties in the third country concerned, which complement US, Canadian, and Australian resettlement schemes, which do not always

²³⁸ McKeever et al. (2005)

²³⁹ McKeever et al. (2005)

²⁴⁰ ECRE (2005, April)

²⁴¹ McKeever et al. (2005)

focus on vulnerability, but on selecting those refugees who demonstrate the best potential for integration into the new country.

5.7.4 Limited scope of EU resettlement schemes and lack of political will

However, as yet there appears to be little political will to establish binding EU instruments on resettlement. Instead, the emphasis is on EU co-ordination and flexible participation, through financial assistance or actual physical resettlement, and the idea of 'targets rather than quotas or ceilings' for member states. It appears that the proposed EU resettlement scheme is limited at present to a small proposal for resettlement from those countries which are the subject of the RPPs, and both the decision to implement a resettlement programme, and the selection criteria for resettlement, will initially be left to member states; after a period there will be discussions on which practices work best, and only in the long term is a common EU resettlement system likely. Liese Prokop, speaking on priorities for the Austrian presidency of the European Council, stated his view: "While I promote [resettlement as one of three 'durable solutions'], I consider that, for humanitarian reasons, voluntary return and local integration measures should be favoured. In line with the proposal of the European Commission, I also consider that the step-by-step approach, which foresees that the establishment of an EU resettlement programme will not be examined before the evaluation of the pilot phase in 2007, is appropriate. On the basis of the results of this evaluation we should be able to assess whether and in which form an EU-wide resettlement programme would be practicable and could be established".²⁴²

Several member states with existing resettlement programmes were moreover disappointed that resettlement was not specifically included as a goal in the Hague programme.

UNHCR therefore encourages EU member states to consider extending the scope of a common EU resettlement scheme, to make it a flexible tool which could be used not only in the context of specific RPPs²⁴³. ECRE further has called on the Council to confirm that resettlement will be an essential element of both pilot RPPs, and that it will expand the resettlement elements of the pilot protection programmes into a resettlement programme

²⁴² Eurasyum (2005, December)

coordinated across the EU. "This would send a powerful signal that Europe is committed to sharing the responsibility for refugee protection, particularly with the poorest countries that host the majority of the world's refugees".²⁴⁴

Nevertheless there are some concerns with respect to the implementation of resettlement schemes, which should now be mentioned.

5.7.5 Cherry-picking

The June 2004 Communication suggests that "setting up of tailor made integration programmes for specific categories of refugees would also be much more easily devised, if a country knew in advance who was arriving on its territory to stay one advantage of resettlement is that orderly and managed entry of refugees would allow member states to anticipate the arrival of persons determined to be in need of international protection". This is seen as advantageous in terms of planning. It is also suggested that resettling refugees whose identity and history have been screened would be "preferable from a security perspective". However it is not clear what the Commission means by 'specific categories of refugees' – ethnic groups, specific nationalities, men, women, children, or workers with certain skill-sets? Hayes (2004) warns that any kind of discrimination or 'cherry-picking' of refugees is incompatible with the refugee Convention and principle of non-discrimination; and if based on ethnicity, overtly racist.

5.7.6 Investment and comprehensive protection

Research carried out by Oxfam in Congolese camps in western Tanzania demonstrated a need for such schemes to be based on a full assessment of the needs and conditions in the target country, to ensure that selection is made according to need and vulnerability, and that resettlement is properly resourced so that it is not detrimental to the protection of those who stay behind. McKeever et al. (2005) concluded that such 'safe passage' measures need the same level of investment and political will as is currently given to migration management measures preventing refugees from reaching Europe. It should be recognised that

²⁴³ UNHCR (2005b)

²⁴⁴ ECRAN: Weekly Update of 14 October 2005
www.ecre.org/Update/Weekly%20Update%2014%20October%202005.doc

resettlement is not a universal panacea, and needs to be approached as part of a comprehensive protection and durable solution strategy.

5.7.7 'Orderly entry' and spontaneous arrivals

The logic behind resettlement schemes is to permit a limited and carefully selected group of refugees in Europe, while the majority stays outside of Europe. The Commission has argued that 'if access to protection can be offered, as quickly as possible and as close to the needs as possible of those concerned and which facilitated a safe and legal avenue to protection in the EU, then there would be no need for those in need of protection to pay traffickers for a dangerous and illegal journey to the EU'. There is scarce evidence supporting this assertion, as no country which carries out resettlement in significant numbers has seen a marked drop in the numbers of 'spontaneous arrivals' as a direct consequence of resettlement schemes.²⁴⁵

Resettlement schemes can literally offer a lifeline for individual refugees, as well as sharing responsibility with poor and overburdened host countries; however such schemes are also presented by the EU as way of 'managing migration' and achieving 'orderly entry' of the at present 'disorderly' flow of asylum seekers to the EU. However this is a false perception, because the tool of resettlement can only complement the individual right to claim asylum. Such 'orderly arrival schemes' cannot, and certainly should not, be a substitute for allowing 'spontaneously arriving' asylum seekers to obtain asylum in the EU.

5.8 PEPS

Another 'orderly entry' proposal involves 'protected entry procedures': a kind of humanitarian visa. At present, people fleeing from persecution are often in the trap of being unable to apply for a visa to travel legally, partly because of their fear of approaching authorities, but mainly because of harsh visa restrictions imposed by EU countries. For example, at a time when perceived repression by authorities began forcing some

²⁴⁵ It is a matter of concern that moves towards an EU resettlement scheme could be used in the future to justify a policy change which discriminates against spontaneous arrivals on the groundless premise.

Zimbabwean nationals to seek asylum in the EU, the UK and Ireland quickly imposed visa restrictions on all Zimbabweans, which automatically put a barrier in the way of persons in need of international protection. A protected entry procedure (PEP) allows a person who wishes to claim asylum in an EU country to approach an embassy, rather than risking the dangerous journey to the country itself. Some European countries, including Austria, France, the Netherlands, Spain, and the UK, have already operated schemes like these – often in an *ad hoc* and informal manner and involving only a few asylum seekers. Denmark in 2002 abolished its PEP procedures, the Netherlands also abolished its procedures, and Austria has as well taken similar steps. Switzerland has for a long time operated a PEP scheme on a formal basis, and in addition, six EU member states allow informal access in exceptional cases: Belgium, Germany, Ireland, Italy, Luxembourg, and Portugal. The impact of these procedures is limited because of both their *ad hoc* nature and the reluctance of states to publicise these channels widely (fearing a huge number of applications).

The European Commission has stated that a harmonised PEP scheme may be one way of making this 'safety-valve' more effective. A 2003 feasibility study argued that PEPs represent "the most adequate response to the challenge of reconciling migration control objectives with the obligation of protecting refugees".²⁴⁶

Oxfam carried out research into the Swiss Protected Entry Procedures in Sri Lanka, demonstrating how a 'humanitarian visa' can be an effective way of offering help to a small number of vulnerable people who would be otherwise unable to access asylum. However for an EU PEP scheme have received little political support. Member states have showed less enthusiasm for PEPs than for activity on resettlement, and are concerned that embassies are lacking in resources and may be likely to become overwhelmed with applications from protection seekers.

An EU PEP scheme is not therefore at present on the table. Rather, the June 2004 Communication suggests that PEPs might be used as an 'emergency strand' of wider

²⁴⁶ Hayes, B. (2004)

resettlement action in specific circumstances, as appropriate. The trend is more towards abolishing as opposed to harmonising the schemes of EU member states²⁴⁷.

5.9 Overview

As we have seen, the concept of 'protection in the region of origin' encompasses varying policy proposals which range from control-oriented ones, focusing on containment, exclusion and capacity building, to more developmental and preventive ones, focusing on infrastructure building, repatriation and integration, and protection of human rights. It is hoped that 'protection in the region of origin' as envisaged by the EU in its Regional Protection Programmes will focus on the latter, which provides genuine possibilities for improving the lives of refugees, benefiting over-burdened host countries, and at the same time meeting the objectives of migration management. It should be stressed that RPPs, along with PEPs and resettlement schemes must not be used towards the goal of excluding asylum seekers from making their claim within Europe upon spontaneous arrival; current initiatives seem to recognise this imperative, and yet there still remains the danger of policy creep. Further, more financial investment needs to be made if such projects are not simply to serve more restrictive purposes of EU member states, and finally, at present it seems that the potential benefits of a European resettlement and PEP scheme are being neglected due to lack of political will - sadly an opportunity missed.

Recommendations

RPPs:

- *Policy makers and implementers must be well informed about conditions in the region of an RPP, at all stages of project development, implementation, and evaluation.*
- *Pilot RPPs cannot address all the challenges facing refugees and their host countries. The EU should recognise forced displacement as a cross-cutting concern in development*

²⁴⁷ European Parliament, Committee on Civil Liberties, Justice and Home Affairs 1 on resettlement schemes and 'protected entry procedures': "At this stage neither scheme is beyond the proposal stage. Unfortunately, neither seems to be backed by a level of resources and political will equivalent to that which supports border controls and interception measures."

policies, and to incorporate the needs of refugees and displaced people into development planning.

- In RPPs care must be taken to ensure that the rights of asylum seekers, in particular protection against refoulement, are fully protected. RPPS should be aimed exclusively at improving protection and the availability of durable solutions, and never be used to exclude the right to claim asylum within the EU.*
- A larger financial budget should be provided to support future RPPs.*
- Local integration should be pursued as an option in many cases where repatriation is not possible; refugees should not be 'warehoused' in camps.*
- Evaluation and qualitative assessment of pilot RPPs is of prime importance and the protection of human rights should not lose priority to the effectiveness of migration management goals when carrying out and drawing conclusions from such evaluation.*

Resettlement:

- EU resettlement schemes or other 'orderly entry' measures must be complementary to, and not a replacement for, a full and fair system for dealing with spontaneous arrivals of asylum seekers on EU territory.*
- EU Member States should continue the European tradition of conducting resettlement on the basis of vulnerability and protection needs, not solely on prospects for integration; further, any distinctions between 'good' resettled refugees and 'bad' spontaneous arrivals must be avoided.*
- Within this context, member states should be encouraged to expand their resettlement activity; first within a guiding EU framework, and subsequently as part of a more coherent EU-wide resettlement scheme.*
- The implementation of resettlement schemes should be properly resourced, in order to operate effectively and not detract from protection activities. EU member states could draw on the experience and knowledge of UNHCR and NGOs that operate resettlement schemes.*

PEPs:

- PEPs should be seen increasingly as a safety valve'; the harmonisation of EU member state PEPs is highly desirable.*

- *Those member states who are unwilling to operate PEPs should be encouraged not to place obstructive visa restrictions on nationals from countries where there are wide-spread human-rights violations.*

Chapter 6: Conclusion

We have seen how the 'external dimension' of EU policy on immigration and asylum has emerged as a result of the limits of internal immigration controls. Two schools of thought have framed this 'external dimension': a restrictive, control-oriented approach; and a more comprehensive approach which seeks to tackle the root causes of migration, recognising that 'migration and development' needs to be discussed as a socio-economic development issue rather than purely a Justice and Home Affairs issue. We have seen that the High Level Working Group, the first body established specifically to work on the 'external dimension' was not successful in its aims due to the dominance of Justice and Home Affairs: not only were officials within the group inexperienced with development areas and thus absorbed themselves with control-oriented measures, but development ministries, as well as development officials in the European Commission, resisted working with the HLWG on the basis that development funds, limited as these already were, would be diverted towards immigration controls measures, and potentially used to prevent people from exercising their human rights, including their right to seek asylum.

The result has been that, while much effort has gone into strengthening the linkages between the EU's immigration and external policies, this has not always led to greater coherence. It has been argued that in fact the EU's prioritisation of measures to fight illegal immigration, and further to enhance security, over tackling the root causes of migration and improving refugee protection, has led to increasing incoherence in relation to the EU's human rights and development cooperation policies and objectives²⁴⁸. The chapter on 'Readmission Agreements and Border Controls' provided an example of such incoherence. Whilst readmission agreements could in theory work positively, easing returns while providing a safety net to ensure that no irregular migrant or failed asylum seeker is sent back to a place where their life or freedom may be in danger, in reality it appears that the practice is different, and it was shown that the protection of human rights upon return are not sufficiently safeguarded at present; and that the use of stricter border controls resulting

²⁴⁸ (ECRE 2004)

in 'buffer states' serves to export responsibility to third countries who may be lacking in resources or political will, to the detriment of vulnerable people.

The EU's approach has been criticised as increasingly unilateralist and focusing on migration control: the EU, rather than asking developing countries whether domestic immigration and asylum policy is among their priorities, is coercing them into accepting its demands through the use of 'sticks and carrots' (aid and trade and the threat of sanctions).

Thus this paper has warned of the risk of seeing development cooperation policies progressively becoming subordinated to the objectives of migration management. Development policy should not be part of this process and should have an independent role in EU foreign policy. It is claimed that such strategies will not divert funds or priorities away from development programmes, but it could be that in the longer term this will be unavoidable as developing countries are forced to divert resources away from social and economic policies to meet their obligations.

It has been concluded that the second school of thought in the 'external dimension' – the 'roots causes' approach – no longer features strongly on the agenda. Even the 2002 Communication on integrating migration issues in the EU's relations with third countries, which listed poverty eradication, institution and capacity building, and conflict prevention as priorities, contained few concrete proposals on these long-term measures.

Control-oriented measures, in particular the emphasis on return and readmission, play a major role in the 2004 Hague Programme; the lion's share of the new financial instruments created will be spent on border controls. The emphasis on 'root causes' has most likely been lost due to the lack of willingness of member states to make fundamental changes to the international economic system for the sake of reducing migration flows. Further, it is a difficult task, requiring long term investment, to establish constructive links between migration and foreign policy goals such as human rights protection, sustainable development and conflict prevention and resolution. It is possible also to challenge the assumption that the causes of migration should necessarily be eliminated, and to assert that

the maintenance of the social and political order in a given country is obviously more desirable.

But it is arguable that if even a small proportion of the resources and political effort currently expended on border controls were spent to tackle the underlying causes of migration and forced migration in particular, the number of asylum seekers in the EU would fall. It also seems likely that as more waves of developing countries ('buffer states') introduce border controls and restrictive immigration and asylum policies, the market in people trafficking and smuggling and false documents is likely to grow, together with all its associated crime.

There is however some room for optimism. Whilst 'root causes' have been dropped off the agenda, talk has been beginning on the issue of 'migration for development'. Mixed in with control-oriented measures outlined in the Hague Programme, is the Commission Communication on Migration and Development of 2005, which prioritises measures where migration can have a positive impact on development, namely remittances, the diaspora, and circular migration. The debate on migration and development is at a similar position to that of the debate on trade and development ten years ago. There is a growing recognition of the connections between the two, and recent years have seen an increasing interest from donor states in de-compartmentalising humanitarian and development aid and in incorporating refugee needs in development aid policies.

Thus, on one hand there is an increasingly complex, costly and integrated system of migration control, which is still the most apparent and pressing priority; on the other hand, a central goal is starting to emerge which is that of managing mobility in order to maximise its positive impact in terms of development or codevelopment. The chapter on 'Return, Repatriation and Circular Migration' considered such codevelopment policies; it considered the practice of both member states and EU funded projects which could be built on to promote sustainable return and development in cooperation with migrants and migrant-sending countries; however it concluded that the lack of political will within EU member states with regard to opening up legal immigration channels and establishing modes of

circular migration was a major hindrance both in terms of enhancing 'brain gain', and in terms of not acknowledging the 'pull' factors of migration to the EU.

In the chapter on 'Protection in the Region of Origin', possible 'third ways' to deal with the realities of (mainly) forced migration were considered, including the Regional Protection Programmes, resettlement, and Protected Entry Procedures. All of these schemes have their limits, and it is clear that there is no 'quick fix', but the potential of the RPPs in terms of aiding refugee protection in the region of origin was recognised, with the caution that funding is at present too low to enable significant long-term results, and also the danger that such projects might be in future be hijacked for the purpose of asylum processing outside of the EU (in preference to processing within the EU). The positive aspects of resettlement and Protected Entry Procedures were also noted in this chapter, but unfortunately political will for both such schemes means that at present such positive benefits may not be realised to a significant extent.

The need for more dialogue – between different departments, between third countries and the EU, and with NGOs and stakeholders – is important, and has been increasingly stressed within policy documents. Unfortunately it has become clear that the recent goals of EU member states in pursuing partnerships with third countries is more about reducing immigration to the EU than reducing emigration from countries of origin or indeed prioritising the most urgent needs of those countries.

Whilst it is not disputed that policies to promote the EU's self-interest abroad are essential, and that for example foreign policy will inevitably occasionally conflict with, distort or undermine development efforts, the question is one of degree. To what extent political decisions account for their impact in developing countries, and whether or not mitigating strategies are incorporated, depends on the political will of the decision-makers. As has been suggested, EU policies relating to forced migration are both determined and implemented by individual member states. Whilst the European Parliament and the Commission are often ready to take on a more proactive, progressive role in forming policy

on the 'external dimension' of immigration and asylum, the individual interests of the member states have generally won out via the European Council.

Nonetheless, it is the assertion of this paper that a narrow focus on readmission and return will not work in achieving the EU's aims of the 'external dimension' of its policy on immigration and asylum. An integrated and coherent approach to migration should still take 'root causes' such as the Common Agricultural Policy seriously and be based on dialogue and cooperation with developing countries, and the protection of human rights should be accorded higher priority within the context of return and readmission. EU policy should move toward multilateralism, establishing a framework for the opening of legal channels of migration and allowing for circular migration. Dialogue should be taken forward in the framework of existing platforms and the needs and interests of those states concerned should be taken into account and included among priorities; areas where the interests of all can be satisfied should be sought out: the example of RPPs provides a perfect example of such an instance, where better protection of refugees in the region of origin may lead to the meeting of both the interests of those aiming to reduce migration flows, and of those concerned for the welfare and exercise of human rights of refugees themselves.

Whether such proposals will be carried out in a true spirit of partnership with the interests of those third countries truly taken into consideration is too early to tell, but will be an important indicator of the direction that the 'external dimension' of EU policy on immigration will take. It has been demonstrated that there are many instances in which 'external dimension' policy is able to take into consideration the needs and concerns of third countries, and still meet the aims of EU member states in terms of migration management. However, in many cases the political will has been lacking in terms of taking positive, radical concrete steps. A more concerted, coherent approach is much needed if policies to reduce unwanted migration into the EU are ever to be reconciled with policies that will benefit developing countries and migrants themselves.

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